Supreme Court, U.S.
FILED
No. 05-1464 MAY 15 2006
OFFICE OF THE CLERK

In The

Supreme Court Of The United States

JO-ANN DARK-EYES
Petitioner,

v.

COMMISSIONER OF REVENUE SERVICES
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the lands identified as "private settlement lands" in the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760, were set aside in that act for the Mashantucket Pequot Tribal Nation and become Indian County upon purchase by the Mashantucket Pequot Tribal Nation?

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PARTIES TO THE PROCEEDING

The petitioner, who was the plaintiff-appellant below, is Jo-Ann Dark-Eyes, an enrolled member of the Mashantucket Pequot Tribal Nation.

The respondent, who was the defendant-appellee below, is the State of Connecticut Commissioner of Revenue Services.

The following amici filed briefs with the Connecticut Supreme Court: The Towns of Ledyard, North Stonington and Preston, Connecticut; the Mashantucket Pequot Tribal Nation; and Connecticut State's Attorney Kevin T. Kane of the New London, Connecticut, Office of the Connecticut State's Attorney.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 1

STATEMENT OF THE CASE 1

A. Factual Background 4

B. State Court Proceedings 11

REASONS FOR GRANTING A WRIT OF CERTIORARI 13

CONCLUSION 14

Appendix A

Jo-Ann Dark-Eyes v. Comm'r of Revenue Services, 276 Conn. 559 (2006) 1a

Appendix B

Jo-Ann Dark-Eyes v. Comm'r of Revenue Services, 2003 Conn. Super. LEXIS 3063 (Conn. Supp. Ct. Oct. 30, 2003) 40a

Appendix C

Order of the Connecticut Supreme Court Denying Reconsideration 53a

Appendix D

Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760 ..... 54a

Appendix E

1982 Conn. Acts 82-31 (Spec. Sess.) 65a

Appendix F

Conn. Gen. Stat. § 47-63 ..... 68a

Appendix G

18 U.S.C. § 1151 ..... 69a

Appendix H

25 U.S.C. § 465 ..... 70a

Appendix I

25 U.S.C. § 1729 ..... 72a

TABLE OF AUTHORITIES

CASES

Alaska v. Native Vill. Of Venetie Tribal Gov't, 522 U.S. 520 (1998) 2, 3, 11, 12

Chickasaw Nation v. United States, 534 U.S. 84 (2001) 13

Choate v. Trapp, 224 U.S. 665 (1912) 2, 12, 13

Connecticut ex rel. Blumenthal v. Babbitt, 26 F. Supp. 2d 397 (D. Conn. 1998) 6

County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation, 502 U.S. 251 (1992) 13

Jo-Ann Dark-Eyes v. Comm'r of Revenue Services, 276 Conn. 559 (2006) ..... *passim*

Montana v. Blackfeet Tribe of Indians, 471 U.S. 759 (1985) 3, 12, 13, 14

Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505 (1991) 2, 3, 11, 12

Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985) ... 13

United States v. Roberts, 185 F.3d 1125 (10th Cir. 1999) 12

Winters v. United States, 207 U.S. 564 (1908) 3, 12, 13

STATUTES AND ACTS

Federal Statutes and Acts

18 U.S.C. § 1151 ..... 1, 3, 11, 14

18 U.S.C. § 1151(a) 3, 12

18 U.S.C. § 1151(b) 3, 12

25 U.S.C. § 465 ..... 1, 2, 10-11

Maine Indian Claims Settlement Act,
25 U.S.C. § 1729 ..... 1, 9

Connecticut Indian Land Claims Settlement Act,
25 U.S.C. §§ 1751-1760 ..... 1, 2, 5

25 U.S.C. § 1751(a) 4

25 U.S.C. § 1751(b) 4

25 U.S.C. § 1751(c) 4

25 U.S.C. § 1751(d) 4, 5

25 U.S.C. § 1752(3) 5, 6

25 U.S.C. § 1752(4) 6

25 U.S.C. § 1753(3) 6

25 U.S.C. § 1754 7

25 U.S.C. § 1754(b) 8, 9, 10

25 U.S.C. § 1754(c) 9

Federal Statutes and Acts (Continued)

28 U.S.C. § 1257(a) 1

State Statutes and Acts

Conn. Gen. Stat. § 47-63 ..... 1, 4

1982 Conn. Acts 82-31 (Spec. Sess.) 1, 5

LEGISLATIVE MATERIALS

Hearings on S. 2294 and S. 2719 Before the S. Select Comm. on Indian Affairs, 97th Cong. 2d Sess. (1982) 4, 5, 6, 7, 14

S. Rep. No. 97-596 (1982) 9, 10

S. Rep. No. 98-43 (1983) 10

S. Rep. No. 98-222 (1983) 10

OPINIONS BELOW

The opinion of the Connecticut Supreme Court is reported at 276 Conn. 559 (2006), and it is reprinted in the Appendix to this Petition ("Pet. App.") at 1a. The opinion of the Connecticut Superior Court is unreported but available at 2003 Conn. Super. LEXIS 3063, and it is reprinted at Pet. App. 40a.

JURISDICTION

The opinion of the Connecticut Supreme Court was entered on January 3, 2006. Reconsideration was denied and notice sent on February 15, 2006. *See* Pet. App. 53a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

STATUTES INVOLVED

This case implicates the Connecticut Indian Claims Settlement Act, 25 U.S.C. §§ 1751-1760[1]; 1982 Conn. Acts 82-31 (Spec. Sess.)[2]; Conn. Gen. Stat. § 47-63[3]; 18 U.S.C. § 1151[4]; 25 U.S.C. § 465[5]; and 25 U.S.C. § 1729.[6]

STATEMENT OF THE CASE

In 1993, the Mashantucket Pequot Tribal Nation ("Tribe") purchased property located at 59 Coachman Pike, Ledyard, Connecticut ("Property"). *Jo-Ann Dark-Eyes v. Comm'r of Revenue Services*, 276 Conn. 559, 563 (2006). The Tribe subsequently submitted an application to have the

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[1] *See* Pet. App. at 54a-64a.
[2] *See* Pet. App. at 65a-67a.
[3] *See* Pet. App. at 68a.
[4] *See* Pet. App. at 69a.
[5] *See* Pet. App. at 70a-71a.
[6] *See* Pet. App. at 72a.

Property formally taken into trust by the federal government pursuant to 25 U.S.C. § 465. That application was granted, and the Property formally was taken into trust on August 25, 1998. *Jo-Ann Dark-Eyes*, 276 Conn. at 563-64.

Petitioner Jo-Ann Dark-Eyes, an enrolled member of the Tribe, resided at the Property from November 1, 1993, through September 30, 1998. *Id.* at 563. In 1996, 1997 and 1998, Ms. Dark-Eyes earned income as a member of the Tribal Council. *Id.* at 564. For each such taxable year, Ms. Dark-Eyes claimed an exemption from Connecticut state income tax on the ground that she was an enrolled member of the Tribe who resided in, and earned her income from, Indian Country. *Id.*

Respondent Commissioner of Revenue Services ("Commissioner") ruled that Ms. Dark-Eyes was not entitled to any exemption for the period prior to August 25, 1998, because, in his view, the Property did not become "Indian Country" until it was formally taken into trust by the federal government. *Id.* at 565.

Ms. Dark-Eyes appealed from the Commissioner's decision, first to the Connecticut Superior Court and then to the Connecticut Supreme Court. *Id.* at 567-68. In order to determine whether the Property constituted Indian Country prior to August 25, 1998, the Connecticut Supreme Court applied the standards set forth in *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520 (1998), and *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505 (1991), to the legislation by which Congress granted the Tribe federal recognition and a federal reservation. *See* Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760 (hereinafter, "the Federal Settlement Act").

Pursuant to *Venetie* and *Citizen Band*, in order for land to constitute Indian Country under 18 U.S.C. § 1151(a) (formal or informal reservation) or 18 U.S.C. § 1151(b) (dependent Indian community), such land must: (1) have been "set aside" by the federal government for use by the tribe; and (2) be under federal superintendence. The Connecticut Supreme Court concluded that the Federal Settlement Act did not render the Property "set aside" for the Tribe and, therefore, was not capable of rendering the Property Indian County within the meaning of 18 U.S.C. § 1151. Having determined that the Property was not "set aside," the Connecticut Supreme Court did not reach the issue of the existence of federal superintendence.

Further appellate review is warranted in this case. In concluding that the Property did not constitute Indian Country until it formally was taken into trust on August 25, 1998, the Connecticut Supreme Court decided a question that should be, but has not been, settled by this Court, i.e., the contours of the circumstances that must exist in order for land to have been "set aside" within the meaning of 18 U.S.C. § 1151. In addition, the Connecticut Supreme Court resolved the Tribe's rights under the Federal Settlement Act in a manner that is not consistent with, and cannot be reconciled with, relevant decisions of this Court. In particular, rather than applying the well established Indian canons of construction; s*ee Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985); *Winters v. United States*, 207 U.S. 564, 576 (1908); *Choate v. Trapp*, 224 U.S. 665, 675 (1912); to the Federal Settlement Act -- an enactment that is both specific to the Tribe and directed to Tribal sovereignty, self-determination and self-governance -- the Connecticut Supreme Court narrowly construed that enactment in favor of the Commissioner and concluded, in effect, that funds, rather than land, had been set aside. *See Jo-Ann Dark-Eyes*, 276 Conn. at 596-97. Ms. Dark-Eyes' Petition for a Writ of Certiorari should be granted.

A. Factual Background

Prior to 1983, the Tribe was not a federally recognized tribe. The Tribe did not have a federal reservation under either a treaty with the United States or an Act of Congress. *See* Hearings on S. 2294 and S. 2719 Before the Select Comm. on Indian Affairs, 97th Cong. 2d Sess. ("Senate Hearing") 26 (1982). Rather, the land that the Tribe owned in Ledyard, Connecticut was recognized as a reservation only under Connecticut law. *See id.*; Conn. Gen. Stat. § 47-63. Hereinafter, such land is referred to as the "state reservation land."

In 1976, the Tribe instituted litigation claiming title to public and private lands located in Ledyard on the theory that, in 1855, such lands had been conveyed away from the Tribe in violation of the Indian Trade and Intercourse Act of 1790. *See* 25 U.S.C. § 1751(a); Senate Hearing at 62-63 and 67. In order to remove the cloud that this litigation placed on title to privately owned lands throughout Ledyard, the State of Connecticut and the owners of certain privately held land devised an agreement with the Tribe ("Agreement"). The Agreement was intended to provide the Tribe with federal recognition and *a federal reservation* -- comprised not only of the state reservation land *but also of, inter alia, swamp lands known as the "Cedar Swamp" and approximately eight hundred acres of privately owned, undeveloped land* -- in exchange for extinguishment of the Tribe's claims of title to lands located in Ledyard. *See* 25 U.S.C. §§ 1751(b)-1751(d); Senate Hearing at 59-60.

The owners of the undeveloped lands that were the subject of the Agreement agreed to the proposed purchases of those lands, at fair market values yet to be determined, for inclusion in the Tribe's reservation. Senate Hearing at 59, 60, 74 and 76. It was agreed, however, that no owner would

be forced to sell. *Id.* at 59. Based on an independent appraisal obtained by the State of Connecticut, the parties to the Agreement determined that the cost of acquisition of the land in question would be in the vicinity of $900,000. *Id.* at 78. The undeveloped lands that the parties to the Agreement contemplated would be purchased and included in the newly created federal reservation were outlined in red on a certain map ("Map") filed with the Connecticut Secretary of the State. *See* 25 U.S.C. § 1752(3)(A). The Property is within the outlined area. *Jo-Ann Dark-Eyes*, 276 Conn. at 577.

Both the Connecticut Legislature and Congress enacted legislation to implement the Agreement. *See* 25 U.S.C. § 1751(d) ("the parties to the lawsuit and others interested in the settlement of Indian lands claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut"). The legislation that the Connecticut Legislature enacted to implement the Agreement ("the State Settlement Act") primarily was concerned with inclusion of the state reservation land in the new federal reservation. *See* 1982 Conn. Acts 82-31 (Spec. Sess.). In contrast, the legislation that Congress enacted to implement the Agreement (i.e., the Federal Settlement Act) is directed to federal recognition of the Tribe; creation of the federal reservation; expansion of that reservation through purchases of privately owned lands within the area outlined in red on the Map; and extinguishment of the Tribe's claims of title to land in Ledyard. *See* 25 U.S.C. §§ 1751-1760.

In the State Settlement Act, the term "reservation" is defined to mean both land owned by the Tribe and land held in trust for the Tribe by the United States. *See* State Settlement Act, § 1. Significantly, the term "reservation" expressly includes (but is not limited to) those lands "*conveyed to . . . said tribe* as part of the settlement of its

land claims in the town of Ledyard." *Id.* (emphasis added). The State Settlement Act confirms the Tribe's title to the state reservation land. *Id.*, § 2. It also authorizes the Governor to convey to the Tribe two additional parcels, comprising approximately twenty acres, that historically had been Tribal burial grounds, for inclusion in the Tribe's federal reservation. *Id.*, § 3.

Like the State Settlement Act, the Federal Settlement Act was intended to ratify and effectuate the Agreement. *See* Senate Hearing at 59. As the Commissioner stated in his brief to the Connecticut Supreme Court, the boundaries of the federal reservation, as contemplated in the Agreement, are "*fixed with precision*" in the Federal Settlement Act. Def.s' Br. at 12 (emphasis added); *see* 25 U.S.C. § 1753(3); *Connecticut ex rel. Blumenthal v. Babbitt*, 26 F. Supp. 2d 397, 401 (D. Conn. 1998), *rev'd sub nom. Connecticut ex rel. Blumenthal v. U. S. Dep't of Interior*, 228 F.3d 82 (2d Cir.), *cert. denied*, 532 U.S. 1007 (2001). The area within such boundaries, which is denominated as the "*settlement lands,*" consists of: (1) the state reservation land and Tribal burial ground land identified in the State Settlement Act (title to which was held by the Tribe in fee, not by the United States in trust for the Tribe); *see* 25 U.S.C. §1752(4) (emphasis added); and (2) certain privately owned land, denominated as "*private settlement lands*"; *see* 25 U.S.C. § 1752(3) (emphasis added). The private settlement lands consist of Cedar Swamp and the privately owned undeveloped land, as outlined in red on the Map, that the parties to the Agreement contemplated would be purchased for inclusion in the Tribe's federal reservation. *See* 25 U.S.C. § 1752(4). Again, the Property is within the area outlined in red on the Map.

In order to enable the Tribe to make the contemplated purchases of the private settlement lands, Congress established a $900,000 fund ("Trust Fund") and directed that it be held in trust by the Secretary of the Interior for the

benefit of the Tribe. *See* 25 U.S.C. § 1754; Senate Hearing at 59 (statement of Sen. Dodd: "[a] federal trust [was] established to purchase 800 acres"); *id.* at 60 (statement of Sen. Weicker: "[f]ederal trust would be established to reimburse those landowners who choose to sell . . . 800 acres would be transferred to the Tribe'); *id.* (statement of Governor O'Neill: "a settlement has been reached by the state, the property owners and the [Tribe] . . . All of the . . . property owners have agreed to transfer approximately 800 acres . . . to the [Tribe] . . . *the land will be held in trust by the U.S. government*") (emphasis added); *id.* at 61 (testimony of Rep. Gejdenson: "We have put together an 800-acre tract . . . *to give the [Tribe] a reservation*") (emphasis added); *id.* at 63 (statement of Rep. Gejdenson: the bill "establishes a Federal trust for purposes of land acquisition as agreed to in the [Agreement]").

Significantly, in reaching the Agreement that was ratified in the Federal Settlement Act, it was the right to expand the federal reservation through purchases of the private settlement lands, and not the $900,000 Trust Fund, that was of paramount importance. *See* Senate Hearing at 59 (statement of Sen. Dodd: "The [Tribe has] agreed to give up all of their aboriginal claims to land in exchange for a federal trust *established to purchase 800 acres*") (emphasis added); *id.* at 60 (statement of Sen. Weicker: ("[*The Tribe] is not seeking money; they want a viable land base* . . . A Federal trust of $900,000 would be established to reimburse those landowners who choose to sell . . . *800 acres would be transferred to the Tribe*") (emphasis added); *id.* at 63 (statement of Rep. Gejdenson: "The [Agreement] reached between the property owners and the Tribe is an agreement to *transfer approximately 800 acres* . . . to the Tribe") (emphasis added) *id.* at 67 (testimony of Tribal Council Chairman Richard Hayward: "[we] have reached an [Agreement] that will pay the current landowners for underdeveloped property. . . [the bill] will not only settle the

[T]ribe's land claims once and for all but will enable the [T]ribe *to plan for its overall land base*") (emphasis added); *id.* at 62 (testimony of the Tribe's attorney Thomas Tureen: "The $900,000 figure is the result of an appraisal we had done . . . We estimate that the *acquisition of the land in question* will cost approximately $900,000") (emphasis added); *id.* at 78 (testimony of Attorney Jackson King, Jr.: "[The Tribe does] not want money. *They are not looking for money. What they are looking for is a larger land base*") (emphasis added).

Consistent with the foregoing, the Federal Settlement Act did not merely provide the Tribe with federal recognition and $900,000 in exchange for extinguishment of the Tribe's claims of title to land in Ledyard. Rather, § 1754(b) of the Federal Settlement Act addressed four issues: "Expenditure of the [Trust] Fund, private settlement lands, economic development plan and acquisition of land and natural resources." *See* 25 U.S.C. § 1754(b). Under § 1754(b), the Secretary of the Interior was not only authorized, but also directed, to expend the Trust Fund at the request of the Tribe. 25 U.S.C. § 1754(b)(1). There were, however, certain initial restraints on such expenditures. In particular, expenditures of money from the Trust Fund had to be made in accordance with an approved plan to promote the economic development of the Tribe. 25 U.S.C. § 1754(b)(3)(A). In addition, until January 1, 1985, at least $600,000 was to be dedicated solely to acquisitions of private settlement lands. 25 U.S.C. § 1754(b)(2). Only after January 1, 1985, could whatever remained of the $600,000 initially dedicated solely to acquisitions of private settlement lands be provided to the Tribe for use in accordance with an economic development plan. 25 U.S.C. § 1754(b)(3)(A).

It is significant that nothing, nothing whatsoever, in the Federal Settlement Act precluded the Tribe from including acquisitions of private settlement lands in an

economic development plan formulated under 25 U.S.C. § 1754(b). Indeed, the legislative history of the Federal Settlement Act reveals that Congress contemplated that the Tribe might use funds dispersed to the Tribe under an economic development plan to purchase such lands. *See* S. Rep. No. 97-596, at 12 (1982) ("It is also understood that monies disbursed pursuant to the economic development plan may be used to acquire additional settlement lands"). In other words, if some or all of the Trust Fund money that initially was dedicated solely to acquisition of private settlement lands had remained available on January 1, 1985, the Tribe still could have used that money to purchase the Property (assuming that the owner remained willing to sell), and any such purchase would have caused the Property to become trust land by operation of law. *See* 25 U.S.C. §1754(b)(7).

It also is significant that, in order to encourage the owners of private settlement lands to agree to sell their lands for inclusion in the federal reservation, Congress provided that that transfers of private settlement lands under 25 U.S.C. § 1754(b) would be deemed to be involuntary conversions and therefore eligible for special treatment under § 1033 of the Internal Revenue Code. *See* 25 U.S.C. § 1754(c). This provision of the Federal Settlement Act is similar, but not identical, to that found in the Maine Indian Claims Settlement Act, 25 U.S.C. §§ 1721-1735 (hereinafter, "Maine Settlement Act"). As noted in the legislative history of the Federal Settlement Act, unlike § 1754(c) of that act, which does not limit § 1033 treatment to private settlement lands purchased with settlement funds, under the Maine Settlement Act, such status is limited to purchases completed with federal settlement funds. *See* 25 U.S.C. § 1729 (codifying Pub. L. No. 96-420, § 10). As also noted in the legislative history, *apart from that distinction,* § 1754(c) of the Federal Settlement Act was to be interpreted consistently with § 1729 of the Maine Settlement Act. *See* S. Rep. No.

97-596 at 14 (1982); S. Rep. No. 98-43, at 10 (1983); S. Rep. No. 98-222 at 15 (1983). This is unequivocal evidence that Congress did not intend to limit the application of the Federal Settlement Act to private settlement lands purchased with Trust Fund monies prior to January 1, 1985. Rather, the Federal Settlement Act was intended to allow the Tribe also to expand its newly created federal reservation through purchases of private settlement lands with funds from other sources.

Significantly, §1754(b)(7) of the Federal Settlement Act provides that "[l]ands . . . acquired under this subsection which are located within the settlement lands *shall* be held in trust by the United States for the benefit of the Tribe." 25 U.S.C. § 1754(b)(7) (emphasis added).[7] As acknowledged in the Respondent Commissioner's brief to the Connecticut Supreme Court, under this provision, once acquired, land becomes trust land by operation of law. Def.s' Br. at 12. In other words, in recognition of the fact that the Agreement represented a carefully crafted resolution of the interests of all concerned, private settlement lands acquired under the Federal Settlement Act come under federal superintendency without resort to the formal process, set forth in 25 U.S.C. §

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[7] In § 1754(b)(5) of the Federal Settlement Act, Congress limited any duties owed by the federal government with respect to funds deposited into the Trust Fund. In particular, Congress provided that, with one exception, any obligations with respect to both the funds themselves *and any proceeds the Tribe might obtain with such funds* would terminate when funds were expended on behalf of the Tribe. 25 U.S.C. § 1754(b)(5); *see* S. Rep. No. 97-596 at 13 (1982) ("as portions of the settlement fund are disbursed to the proper tribal officials, the United States shall have no further responsibility for the use of those funds disbursed"). The exception to this extinguishment of all obligations related to the Trust Fund applies to private settlement lands purchased with Trust Fund money. *Id.* In other words, in extinguishing any trust obligations arising from the Trust Fund itself, 25 U.S.C. § 1754(b)(5) does not also eliminate any trust obligations that may have arisen, by operation of law, under 25 U.S.C. § 1754(b)(7).

465, for acquiring trust status at the discretion of the Department of Interior. Indeed, the State of Connecticut, impliedly recognizing that the Agreement and Federal Settlement Act embody such a resolution of the competing interests, has not opposed applications by the Tribe to have lands that it acquires within the area outlined in red on the Map formally taken into trust under 25 U.S.C. § 465. *See* Def.'s Br. at 13.

B. State Court Proceedings

It is true that the Federal Settlement Act itself does not expressly address the status of private settlement lands that might be purchased with funds from a source other than the Trust Fund. Nonetheless, the language and legislative history of the Federal Settlement Act provide compelling evidence that the Federal Settlement Act was intended to: (1) create a federal reservation that encompassed the state reservation land and the tribal burial ground; (2) grant the Tribe a right to expand the size of that reservation through consensual purchases of privately owned lands located within the area specifically outlined in red on the Map; and (3) provide the Tribe with a means to exercise that right to expand its reservation to include the private settlement lands.

Despite such evidence, however, both the Connecticut Superior Court and the Connecticut Supreme Court held that the Tribe's purchase of the Property in 1993 did not render the Property Indian Country. See *Jo-Ann Dark-Eyes*, 276 Conn. at 569. In determining that, prior to August 25, 1998, the Property was not Indian Country within the meaning of 18 U.S.C. § 1151, the Connecticut Supreme Court concluded that the factors set forth in two decisions of the this Court, *Venetie*, 522 U.S. at 520, and *Citizen Band*, 498 U.S. at 505, should be applied to the Federal Settlement Act. *See Jo-Ann Dark-Eyes*, 276 Conn. at 584. In *Venetie*, a case that involved whether certain land constituted a

dependent Indian community within the meaning of 18 U.S.C. § 1151(b), as well as in *Citizen Band,* a case that involved whether certain land held in trust constituted an informal reservation with the meaning of 18 U.S.C. § 1151(a), this Court concluded that, in order for the lands in question to constitute Indian Country, such land must: (1) have been set aside for the tribe by the federal government; and (2) be under federal superintendence. *See Venetie,* 522 U.S. at 530-31; *Citizen Band,* 498 U.S. at 511; *see also United States v. Roberts,* 185 F. 3d 1125, 1133 (10th Cir.), *cert. denied,* 529 U.S. 1108 (2000).

The Connecticut Supreme Court began its analysis of whether the Property constituted informal reservation land/a dependent Indian Community within the meaning of 18 U.S.C. § 1151 by considering whether the Property had been "set aside" for the Tribe under the Federal Settlement Act. *See Jo-Ann Dark-Eyes,* 276 Conn. at 584, 587-88 and 590-91; *Venetie,* 522 U.S. at 530-31. After noting that "the precise circumstances necessary to satisfy a set aside have not been clearly delineated by the courts; *Jo-Ann Dark-Eyes,* 276 Conn. at 588 (emphasis added); the Connecticut Supreme Court reasoned that, because the Federal Settlement Act did not mandate that the private settlement lands be purchased for inclusion in the reservation and instead allowed the owners of the private settlement lands to decline to sell, the lands within the area outlined in red on the Map were not "set aside" for the Tribe.[8] *See id.* at 593-96. Thus, rather than following the longstanding Indian canons of construction, *see Montana v. Blackfeet Tribe of Indians,* 471 U.S. at 766; *Winters v. United States,* 207 U.S. at 576; *Choate v. Trapp,* 224 U.S. at 675, when it interpreted the

[8] Having determined that the Property was not "set aside," the Connecticut Supreme Court did not reach the issue of the existence of federal superintendence.

Federal Settlement Act -- an enactment that is both specific to the Tribe and directed to tribal sovereignty, self-determination and self-governance -- the Connecticut Supreme Court adopted a narrow reading in favor of the Commissioner and concluded, in effect, that funds, rather than land, had been set aside for the Tribe.

The decision of the Connecticut Supreme Court was released on January 3, 2006. Reconsideration was denied and notice sent on February 15, 2006. Pet. App. at 53a.

REASONS FOR GRANTING A WRIT OF CERTIORARI

The decision of the Connecticut Supreme Court is inconsistent with, and, indeed, cannot be reconciled with decisions of this Court regarding interpretation of federal treaties, executive orders and statutes that are directed to tribal sovereignty, self determination and self governance. This Court long has recognized that the Indian canons of construction, which are rooted in the unique trust relationship between the United States and Indians, govern the interpretation of such enactments. *See, e.g. County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992); *Montana v. Blackfeet Tribe*, 471 U.S. at 766; *Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985); *Winters v. United States*, 207 U.S. at 576; *Choate v. Trapp*, 224 U.S. at 675; *compare Chickasaw Nation v. United States*, 534 U.S. 84 (2001) (Indian canons did not resolve whether a provision of the Indian Gaming Regulatory Act, legislation of general applicability, created a exemption to taxation under the internal revenue code). Under the Indian canons, enactments directed to tribal sovereignty, self determination and self governance are to be construed liberally in favor of establishing Indian rights, and

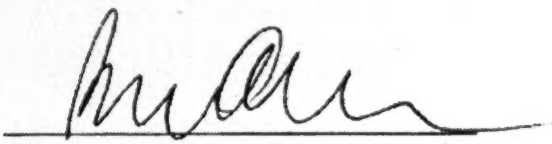
any ambiguities in construction are to be resolved in favor of the Indians. *See Montana*, 471 U.S. at 766.

It cannot be gainsaid that the Federal Settlement Act is such an enactment. Indeed, the Federal Settlement Act having arisen out of the longstanding dereliction of the federal government's trust obligations to the Western Pequot Indians; *see* Senate Hearing at 29; it is difficult to envision a more compelling case for application of the Indian canons. Yet, despite the overwhelming evidence that the Agreement and Federal Settlement Act were intended to: (1) create a federally recognized reservation that encompassed the state reservation land and the tribal burial ground; (2) grant the Tribe a right to expand the size of that reservation through consensual purchases of the private settlement lands; and (3) provide the Tribe with means to exercise its right to expand its reservation to include the private settlement lands, the Connecticut Supreme Court -- after noting the dearth of authority regarding the contours of circumstances required to create a "set aside" -- concluded that the Federal Settlement Act did not render the private settlement lands outlined in red of the Map "set aside" within the meaning of 18 U.S.C. § 1151, and that consequently, the Tribe's purchase of the Property in 1993 did not render the Property Indian Country. *Jo-Ann Dark-Eyes*, 276 Conn. at 569. The decision of the Connecticut Supreme Court cannot be reconciled with this Court's decisions regarding construction of federal enactments, such as the Federal Settlement Act, that are directed to matters of tribal sovereignty, self determination and self governance.

CONCLUSION

For all of the foregoing reasons, Ms. Dark-Eyes' Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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May 15, 2006

**Counsel of Record*

No. _____

In The

Supreme Court Of The United States

JO-ANN DARK-EYES

Petitioner,

v.

COMMISSIONER OF REVENUE SERVICES

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

APPENDIX

JO-ANN DARK-EYES v. COMMISSIONER OF REVENUE SERVICES

SC 17140

SUPREME COURT OF CONNECTICUT

276 Conn. 559

September 6, 2005, Argued
January 3, 2006, Officially Released

KATZ, J. The issue in this tax appeal is whether the plaintiff, Jo-Ann Dark-Eyes, an enrolled member of the federally recognized Mashantucket Pequot Tribe (tribe), was subject to state income tax on income she derived from sources within the tribe's reservation while living on property owned by the tribe and designated by the United States Congress as "private settlement lands" pursuant to the Mashantucket Pequot Indian Claims Settlement Act (settlement act), 25 U.S.C. §§ 1751 through 1760. The plaintiff appeals from the judgment rendered by the trial court dismissing her tax appeal, which challenged the assessment of the 1996, 1997 and 1998 income taxes by the defendant, the commissioner of revenue services. The plaintiff principally claims that, because she resided in "Indian country," as that term is defined under 18 U.S.C. § 1151[1] during the taxable years in question, she was exempt

[1]The term "Indian country" is defined by 18 U.S.C. § 1151 as "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

from state income tax. She also claims that: (1) the assessment of state income tax on enrolled members of the tribe living in the state violates the federal constitution, absent the express consent of Congress; and (2) the department of revenue services regulation under which the defendant determined that the plaintiff was not entitled to an exemption as an enrolled member of a federally recognized tribe is void due to an impermissible delegation of authority. We affirm the judgment of the trial court.

The following undisputed facts and procedural history are relevant to our disposition of the plaintiff's appeal. In 1976, the tribe filed a lawsuit in which it asserted aboriginal or tribal title to land in and around the town of Ledyard claiming that, in 1855, approximately 800 acres of land had been conveyed out of tribal hands without congressional approval, in violation of the nonintercourse provisions of the Trade and Intercourse Act of 1790 (now codified at 25 U.S.C. § 177), thereby placing a cloud on the title to privately and publicly held land. The tribe, the affected private landholders and the state negotiated a tentative settlement that included, inter alia, extinguishing the tribe's aboriginal claims to the disputed land in exchange for federal recognition of the tribe, fee simple title to certain reservation lands and the establishment of a fund to purchase land from willing sellers within a designated 800 acre area in Ledyard (private settlement lands). In 1983, Congress enacted the settlement act to embody the agreement reached by the parties, thus authorizing the appropriation of settlement funds. 25 U.S.C. § 1754(a).[2] The settlement funds were available for the funding of economic development and for the purchase of private settlement lands, which, by operation of the act, were to be held in trust by the United States for the tribe's benefit. 25 U.S.C. § 1754 (a) and (b). The act imposed a January, 1985 deadline for drawing on the fund for the purchase of the private settlement lands, after which

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[2] See footnote 14 of this opinion for the relevant text of 25 U.S.C. § 1754.

time unused funds were to be disbursed for use toward economic development for the tribe. 25 U.S.C. § 1754 (b) (2).

In 1993, the tribe purchased with nonsettlement moneys property located at 59 Coachman Pike in Ledyard (Coachman property), which was located within the area designated under the settlement act as private settlement lands. The plaintiff, a Connecticut resident and an enrolled member of the tribe, resided on the Coachman property from November 1, 1993, through September 30, 1998. The tribe held title to the Coachman property in fee simple until August 25, 1998, at which time, pursuant to a petition filed by the tribe under 25 U.S.C. § 465,[3] a provision of the Indian Reorganization Act, the United States government accepted the property into trust for the tribe's benefit as a part of the tribe's reservation.

During 1996, 1997 and 1998 (taxable years), the plaintiff

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[3] "Enacted in 1934, the [Indian Reorganization Act, 25 U.S.C. §§ 461 through 469] fundamentally restructured the relationship between Indian tribes and the federal government, reversing the nineteenth century goal of assimilation and embodying principles of tribal self-determination and self-governance. . . . The [Indian Reorganization Act] authorizes the [Secretary of the Interior (Secretary)] to take certain lands into trust for the benefit of an Indian tribe. See 25 U.S.C. § 465. The procedures governing the Secretary's exercise of discretion in this regard are set forth in Department of Interior regulations." (Citation omitted; internal quotation marks omitted.) *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, 228 F.3d 82, 85 (2d Cir. 2000), cert. denied, 532 U.S. 1007, 121 S. Ct. 1732, 149 L. Ed. 2d 657 (2001). "When the Secretary takes land into trust for the use of Indians pursuant to the [Indian Reorganization Act] of 1934, the land is held under the superintendence of the federal government and is ordinarily exempt from certain state laws, including (1) state or local taxation, see 25 U.S.C. § 465; (2) local zoning and regulatory requirements, see 25 C.F.R. § 1.4 (a); or, (3) state criminal and civil jurisdiction, unless the tribe consents to such jurisdiction, see 25 U.S.C. §§ 1321 (a), 1322 (a)." (Internal quotation marks omitted.) *Carcieri v. Norton*, 423 F.3d 45, 59 n.4 (1st Cir. 2005).

earned income from the Mashantucket Pequot Tribal Council. For each of the taxable years, she filed a Connecticut resident tax return claiming that she was exempt from the state income tax as an enrolled member of the tribe who resided in and earned her income from sources within Indian country.[4]

The defendant rejected the plaintiff's claim, the department of revenue services (department) having found that the Coachman property was not Indian country until it was taken into trust by the United States government in August, 1998.[5] The department first acknowledged that, in accordance with § 12-702(c)(1)-3 of the Regulations of Connecticut State Agencies,[6] which defines Indian country in accordance with

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[4] In 1998, the plaintiff relocated from the Coachman property to property located at Shewville Road in Ledyard, land also owned in fee by the tribe, but located outside the private settlement land boundaries. Initially, she also claimed a tax exemption for the time during which she resided on Shewville Road; however, the department's denial of an exemption during her Shewville Road residency was not a subject of her appeal to the trial court.

[5] The defendant had granted the plaintiff's request for a refund for 1995, but thereafter took the position that the refund was issued in error. The defendant decided that he would take no further action to recover that tax, however, due to the expiration of the statute of limitations.

[6] Section 12-702 (c) (1)-3 of the Regulations of the Connecticut State Agencies addresses the taxation of enrolled members of a federally recognized tribe and provides in relevant part: "(a) In general. Income of an enrolled member of a federally recognized tribe is exempt from Connecticut income tax as long as the member (i) resides in Indian country and (ii) only has income that is derived from or connected with sources within Indian country. Income of an enrolled member of a federally recognized tribe is subject to Connecticut income tax in the same manner as if the person were not an enrolled member if the member does not reside in Indian country. See *McClanahan v. State Tax Commission*, 411 U.S. 164 [93 S. Ct. 1257, 36 L. Ed. 2d 129] (1973), *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 [100 S. Ct. 2578, 65 L. Ed. 2d 665] (1980) and *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. [114, 508 U.S. 114, 113 S. Ct. 1985] 124 L. Ed. 2d 30 (1993).

"(b) Unmarried member residing in Indian country. Every enrolled

the federal definition of that term under 18 U.S.C. § 1151, "income earned by enrolled members of a federally recognized tribe who reside in Indian country and whose income is derived from or connected with sources within Indian country is exempt from Connecticut income tax." See

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member who is unmarried and who resides in Indian country located within Connecticut--

"(1) all of whose Connecticut adjusted gross income is derived from or connected with sources within Indian country, shall be exempt from Connecticut income tax. Such member shall file a Connecticut income tax return and write 'exempt under section 12-702 (c) (1)-3 (b)' thereon.

"(2) only some of whose Connecticut adjusted gross income is derived from or connected with sources within Indian country, shall be subject to Connecticut income tax. His or her Connecticut income tax liability shall be determined by multiplying his or her Connecticut income tax liability calculated as if he or she were not an enrolled member by a fraction, the numerator of which is Connecticut adjusted gross income that is not derived from or connected with sources within Indian country and the denominator of which is Connecticut adjusted gross income. Such member shall write 'subject to tax under section 12-702(c)(1)-3(b)' on his or her Connecticut income tax return.

"(c) Unmarried member not residing in Indian country. Every enrolled member who is unmarried and who does not reside in Indian country, shall be subject to Connecticut income tax in the same manner as if he or she were not an enrolled member of a federally recognized tribe. . . .

"(g) Definitions. For purposes of this section:

"(1) 'Enrolled member' means an enrolled member of a federally recognized tribe.

"(2) 'Indian country' means Indian country, as defined in 18 U.S.C. § 1151.

"(3) 'Derived from or connected with sources within Indian country' is to be so construed so as to accord with the definition of the term 'derived from or connected with sources within this state' set forth in Part II in relation to the adjusted gross income of a nonresident individual.

"(4) 'Connecticut adjusted gross income that is not derived from or connected with sources within Indian country' means the difference remaining after Connecticut adjusted gross income derived from or connected with sources within Indian country is subtracted from Connecticut adjusted gross income.

"(h) While this section pertains to Section 12-702(c)(1) of the general statutes, for purposes of supplementary interpretation, as the phrase is used in Section 12-2 of the general statutes, the adoption of this section is authorized by Section 12-740(a) of the general statutes."

Regs., Conn. State Agencies § 12-702(c)(1)-3(a). The department concluded, however, that a narrower definition of Indian country than that generally applied under § 1151 applies to this particular tribe, limiting Indian country to "only those settlement lands (as defined in the [settlement act] . . .) that have been taken in trust by the United States for the benefit of the Mashantucket Pequot Tribe as part of the reservation." [7] (Citation omitted.) The plaintiff filed an administrative appeal from the ruling, and by letter, which constituted a "determination or disallowance of the [defendant]," the appellate division issued a final determination upholding the denial of the exemption.

The plaintiff then appealed from the department's decision to the Superior Court pursuant to General Statutes § 12-730.[8]

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[7] In reaching its decision, the department relied on its Informational Publication 99(29), entitled "Connecticut Income Tax Obligations of Enrolled Members of The Mashantucket Pequot Tribe," which provides in relevant part: "The term Indian country is used and defined under federal law. Generally, it means all lands within the limits of any Indian reservation under the jurisdiction of the Federal Government and all dependent Indian communities.

"With respect to the Mashantucket Pequot Tribe, however, a federal district court judge has held that Indian country of the Mashantucket Pequot Tribe is only those settlement lands (as defined in the Connecticut Indian Land Claims Settlement Act; section 1751 of title 25 of the United States Code) that have been taken in trust by the United States for the benefit of the Mashantucket Pequot Tribe as part of the reservation. . . . Consequently, only enrolled members of the Mashantucket Pequot Tribe residing on settlement lands that have been taken into trust by the United States for the benefit of the Tribe as part of the reservation are considered to be residing in Indian country of the Mashantucket Pequot Tribe." In their stipulated facts, the parties agree that the federal District Court case referred to in the department's publication is *Connecticut v. Babbitt*, 26 F. Supp. 2d 397 (D. Conn. 1998), rev'd sub nom. *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, 228 F.3d 82 (2d Cir. 2000), cert. denied, 532 U.S. 1007, 121 S. Ct. 1732, 149 L. Ed. 2d 657 (2001).

[8] General Statutes § 12-730 provides in relevant part: "Any taxpayer aggrieved because of any determination or disallowance by the

The parties filed cross motions for summary judgment and a stipulation of facts, on which the trial court rendered judgment in favor of the defendant dismissing the appeal, concluding that the plaintiff was not exempt from state income tax because she did not reside in Indian country during the period at issue. The trial court first reasoned that, under the settlement act, property within the private settlement lands that was purchased with the tribe's moneys, as opposed to settlement funds, could not become part of the tribal reservation unless and until the United States took the land into trust for the tribe under § 465 of the Indian Reorganization Act. The court, therefore, determined that the Coachman property was not part of the tribe's reservation during the taxable years. The trial court then concluded that Indian country, under the settlement act, encompasses only the tribe's reservation and, accordingly, the Coachman property was not Indian country during the period in question. The court also rejected the plaintiff's contention that the property was a "dependent Indian community" and, therefore, Indian country as defined generally under § 1151 (b). It reasoned that: (1) the Coachman property "had not been set aside by the federal government for the use of the [tribe] as Indian land"; and (2) although the tribe had the option of transferring the Coachman property to be held in trust by the United States during the taxable years, the federal government did not exercise the type of active control over that property required for the tribe to be considered dependent during that period. Accordingly, the trial court dismissed the plaintiffs appeal. This appeal followed.[9]

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commissioner under section 12-729, 12-729a or 12-732 may . . . take an appeal therefrom to the superior court . . . ."

[9] The plaintiff appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to Practice Book § 65-1 and General Statutes § 51-199(c). Oral argument in this appeal initially was scheduled for November, 2004. In light of the United States Supreme Court's pending decision in *Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 , 125 S. Ct. 1478, 161 L. Ed.

On appeal, the plaintiff principally claims that the trial court improperly concluded that the Coachman property was not Indian country prior to being taken into trust because the court: (1) failed to apply the definition of Indian country under 18 U.S.C. § 1151, which includes dependent Indian communities; and (2) concluded that, even if § 1151 could apply, the property was not a dependent Indian community. The plaintiff also claims that the trial court improperly failed to conclude that the state's assessment of an income tax on enrolled members of the tribe living in the state violates the federal constitution and constitutes an impermissible

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2d 386 (2005), a case that raised issues that could bear on our resolution of the present appeal, we marked the case over until the September, 2005 term and thereafter issued an order directing the parties to submit supplemental briefs addressing the effect, if any, of *Sherrill* on this appeal. In Sherrill, the Oneida tribe had sought declaratory and injunctive relief barring the city of Sherrill's assessment of property taxes on the ground that the tribe's recent acquisition of fee title to discrete parcels of historic reservation land revived its ancient sovereignty over each parcel as it was required by the tribe. Id., 1483. The Supreme Court ultimately did not address the substantive issues raised in the lower court, which included determinations as to whether the parcels of land qualified as "Indian country" under 18 U.S.C. § 1151, but instead decided against the tribe under the common-law equitable doctrine of laches in light of the fact that the tribe had not occupied the reservation lands for two centuries and since that time the land had been subject to state and local taxation. Id., 1494; see id., 1483 ("Given the longstanding, distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the [Oneida tribe's] long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The [tribe] long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders."). In light of the court's focus on laches in that case, we conclude that the holding in *Sherrill* does not inform our analysis in the present case.

delegation of authority to the defendant.[10]

The defendant counters that the settlement act provides a narrower definition of Indian country supplanting the broader definition under § 1151 that generally is applied under federal law. The defendant contends that the Coachman property is not Indian country under the settlement act because the property was not purchased with settlement funds and thereby automatically taken into trust, as required under that act. The defendant further claims that, even if the broader definition of Indian country under § 1151 controls, the Coachman property does not constitute a dependent Indian community under that section, as claimed by the plaintiff. Finally, the defendant contends that the assessment of income tax neither was unconstitutional nor an ultra vires act. Upon a review of the settlement act and other relevant federal authorities, we agree with the defendant that the Coachman property did not constitute Indian country during the taxable years in question. We also reject the plaintiff's secondary claims.

As a preliminary matter, we set forth the applicable standard of review. "Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court

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[10] The trial court did not reach the plaintiff's claims regarding impermissible delegation and violation of the federal constitution, although they were raised and briefed by the parties. We decide these issues nevertheless because "under circumstances where the record presents the entire proceedings before the trial court, the question is essentially one of law, and we are in no different position than we would be in had the trial court answered it, we have considered, on its merits, the question thus left undecided." (Internal quotation marks omitted.) *Biller Associates v. Route 156 Realty Co.*, 52 Conn. App. 18, 25, 725 A.2d 398 (1999), aff'd, 252 Conn. 400, 746 A.2d 785 (2000).

must view the evidence in the light most favorable to the nonmoving party. . . . The party moving for summary judgment has the burden of showing . . . that the party is . . . entitled to judgment as a matter of law. . . . Our review of the trial court's decision to grant the defendant's motion for summary judgment is plenary." (Internal quotation marks omitted.) *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724, 733, 873 A.2d 898 (2005). Finally, because this case distills to an issue of statutory interpretation, our review of that issue of law is plenary. *Barrett v. Montesano*, 269 Conn. 787, 792, 849 A.2d 839 (2004).

I

As the parties' claims suggest, this appeal turns on a fundamental distinction--whereas citizens generally are not exempt from the payment of state taxes, members of a recognized tribe deriving their income from tribal sources generally are exempt from such taxes if they live in Indian country.[11] Thus, the dispositive question is whether the Coachman property qualified as Indian country during the period in question, prior to the United States government taking the property into trust.

To make that determination, we first set forth the pertinent general principles of statutory construction and certain specific principles applicable to the construction of Indian law. In light of those principles, we next determine the meaning of Indian country applicable to this appeal, namely, whether the general definition set forth under § 1151 applies

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[11] The parties do not dispute that the income earned by the plaintiff from the tribe was income derived from or connected with sources within Indian country. Nor do the parties dispute that the plaintiff qualifies for a tax exemption on income from the tribe that was earned after the Coachman property was taken into trust, but while she still was residing there.

or whether the settlement act supplants that definition and sets forth a narrower definition that applies to the Coachman property. Finally, we determine whether the Coachman property satisfied the applicable definition of Indian country prior to the federal government taking it into trust.

A

"With respect to the construction and application of federal statutes, principles of comity and consistency require us to follow the plain meaning rule for the interpretation of federal statutes because that is the rule of construction utilized by the United States Court of Appeals for the Second Circuit. . . . Moreover, it is well settled that the decisions of the Second Circuit Court of Appeals carry particularly persuasive weight in the interpretation of federal statutes by Connecticut state courts." (Citations omitted; internal quotation marks omitted.) *Szewczyk v. Dept. of Social Services*, 275 Conn. 464, 474-75, 881 A.2d 259 (2005). Accordingly, our analysis of the pertinent federal statutes "begins with the plain meaning of the statute." *United States v. Ripa*, 323 F.3d 73, 81 (2d Cir. 2003); accord *In re Caldor Corp.*, 303 F.3d 161, 167-68 (2d Cir. 2002) ("as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute" [internal quotation marks omitted]). If the meaning of the text is not plain, however, "we must look to the statute as a whole and construct an interpretation that comports with its primary purpose and does not lead to anomalous or unreasonable results. See *American Tobacco Co. v. Patterson*, 456 U.S. 63, 71, 102 S. Ct. 1534, 71 L. Ed. 2d 748 (1982) (Statutes should be interpreted to avoid untenable distinctions and unreasonable results whenever possible.); *Castellano v. City of New York*, 142 F.3d 58, 67 (2d Cir. 1998) (Where the language is ambiguous, we focus upon the broader context and primary purpose of the statute.)." (Internal quotation marks omitted.) *Connecticut ex rel. Blumenthal v. United*

States Dept. of the Interior, 228 F.3d 82, 89 (2d Cir. 2000), cert. denied, 532 U.S. 1007, 121 S. Ct. 1732, 149 L. Ed. 2d 657 (2001).

When interpreting statutes implicating Indian affairs, however, "as the [United States] Supreme Court has often reiterated, the standard principles of statutory construction do not have their usual force in cases involving Indian law. . . . Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit. . . . In determining [congressional] intent, we are cautioned to follow the general rule that doubtful expressions are to be resolved in favor of [those] who are the wards of the nation, dependent upon its protection and good faith."[12]

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[12] We are mindful that the United States Supreme Court has stated recently that the Indian construction canon is not a mandatory rule, but a guide that "need not be conclusive." (Internal quotation marks omitted.) *Chickasaw Nation v. United States*, 534 U.S. 84, 94, 122 S. Ct. 528, 151 L. Ed. 2d 474 (2001). The court noted that canons "are designed to help judges determine the Legislature's intent as embodied in particular statutory language." Id. In *Chickasaw Nation*, the court chose not to apply the canon, finding that the statute before it was not "fairly capable of two interpretations . . . (Internal quotation marks omitted.) Id. *Chickasaw Nation*, however, can by no means be read as a complete rejection of the canon and, indeed, the canon continues to be applied. See, e.g., *Carcieri v. Norton*, 423 F.3d 45, 66 (1st Cir. 2005); *Grand Traverse Band of Ottawa & Chippewa Indians v. Office of the United States Attorney for the Western District of Michigan*, 369 F.3d 960, 971 (6th Cir. 2004).

We also note that the Second Circuit Court of Appeals has rejected the state's contention that the Indian canon of construction has no application to the settlement act and this tribe because of the tribe's tremendous wealth. See *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 228 F.3d 93. Noting that "the economic power and legal acumen of the [tribe] bears no discernible resemblance to that of the Indian tribes on whose behalf the Indian canon of construction was first developed"; id., 92; the court held that this does not strip the Indian canon of its force because the canon is applied even when Indians are at no practical disadvantage. Id. Moreover, the Second Circuit noted that the tribe's present wealth post-dates the settlement act: "At the time of enactment in 1983, the conditions of the [tribe] were more consistent

(Citations omitted; internal quotation marks omitted.) Id., 92; see also *HRI, Inc. v. Environmental Protection Agency*, 198 F.3d 1224, 1246 (10th Cir. 2000) (reaffirming that federal executive is to consider its strict fiduciary obligation when interpreting regulations that directly affect its administration of Indian lands); *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter*, 217 Conn. 612, 620, 587 A.2d 139 (1991) ("Certain special principles of statutory construction apply to federal Indian law. Ambiguities in statutes concerning dependent tribes are to be resolved in favor of the Indians. . . . State jurisdiction over reservations, historically, is strongly disfavored." [Internal quotation marks omitted.]).

With respect to questions of jurisdiction, as we have noted in previous decisions, "the United States has the authority to regulate Indian affairs pursuant to the Indian commerce clause of the United States constitution. U.S. Const., art. I, § 8, cl. 3; see *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980)." *Charles v. Charles*, 243 Conn. 255, 259, 701 A.2d 650 (1997), cert. denied, 523 U.S. 1136, 118 S. Ct. 1838, 140 L. Ed. 2d 1089 (1988). In light of this constitutional delegation of authority to the federal government, certain principles have been elucidated by the United States Supreme Court that bear on the states' exercise of jurisdiction over Indian affairs generally and taxation specifically. A state is without jurisdiction to subject a tribal member who is living in Indian country and deriving income from reservation sources to a state income tax absent an express authorization from Congress. *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 U.S. 114, 123, 113 S. Ct. 1985, 124 L. Ed. 2d 30 (1993). The Supreme Court, however, "recognized that a State may

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with the premise underlying the Indian canon of statutory construction. Even if [the court] would endorse [the state's] view that the Indian canon of construction applies with less force to statutes or treaties negotiated with a wealthy, powerful, and well-represented Indian tribe, it has no application here." Id., 93.

have authority to tax or regulate tribal activities occurring within the State but outside Indian country." *Kiowa Tribe of Oklahoma v. Mfg. Technologies, Inc.*, 523 U.S. 751, 755, 118 S. Ct. 1700, 140 L. Ed. 2d 981 (1998). Thus, in considering whether the state possesses authority to tax, "it must be determined whether the relevant tribal members live in Indian country . . . ." *Oklahoma Tax Commission v. Sac & Fox Nation*, supra, 126; see id., 124-25 (relevant boundary for taxing jurisdiction is not perimeter of formal reservation, but, rather, all land set aside for tribe or its members).

B

Our analysis of the issue in the present case begins with the settlement act, enacted by Congress in 1983. The settlement act extinguished the tribe's aboriginal claims to hundreds of acres of land and, "in exchange, (1) provided for federal recognition of the Tribe, see [25 U.S.C.] § 1758;[13] (2) established a $ 900,000 fund . . . designed principally for the

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[13] Section 1758 of title 25 of the United States Code provides: "(a) Applicability of United States laws and regulations

"Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe.

"(b) Filing of organic governing document and amendments

"The Tribe shall file with the Secretary a copy of its organic governing document and any amendments thereto. Such instrument must be consistent with the terms of this subchapter and the [settlement act] to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved June 9, 1982.

"(c) Eligibility for services and benefits

"Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of October 18, 1983."

purchase of private property, see [25 U.S.C.] § 1754;[14] and

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[14] Section 1754 of title 25 of the United States Code provides in relevant part: "(a) Establishment and administration

"There is hereby established in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund (hereinafter referred to in this section as the 'Fund'). The Fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this subchapter.

"(b) Expenditure of Fund; private settlement lands; economic development plan; acquisition of land and natural resources

"(1) The Secretary is authorized and directed to expend, at the request of the Tribe, the Fund together with any and all income accruing to such Fund in accordance with this subsection.

"(2) Not less than $ 600,000 of the Fund shall be available until January 1, 1985, for the acquisition by the Secretary of private settlement lands. Subsequent to January 1, 1985, the Secretary shall determine whether and to what extent an amount less than $ 600,000 has been expended to acquire private settlement lands and shall make that amount available to the Tribe to be used in accordance with the economic development plan approved pursuant to paragraph (3).

"(3)(A) The Secretary shall disburse all or part of the Fund . . . (excepting the amount reserved in paragraph [2]) according to a plan to promote the economic development of the Tribe.

"(B) The Tribe shall submit an economic development plan to the Secretary and the Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the Tribe. . . .

"(5) As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility to the Tribe or its members with respect to the sums paid, any subsequent expenditures of these sums, or any property other than private settlement lands or services purchased with these sums. . . .

"(7) Lands or natural resources acquired under this subsection which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe.

"(8) Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land and natural resources. Such land and natural resources shall not be subject to any restriction against alienation under the laws of the United States.

"(9) . . . The Secretary may acquire land or natural resources . . . only if the Secretary and the ostensible owner of the land or natural resources

(3) identified boundaries within which lands acquired by the Tribe would be held in trust by the Secretary [of the Interior] and would constitute the Tribe's reservation, the so-called settlement lands, see [25 U.S.C. §] 1752 (3), (4) [and] (7)."[15] *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, *228 F.3d 86*.

The settlement act defines the tribe's reservation as "the existing reservation of the Tribe as defined by . . . the

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have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner. . . .

"(d) Documentation of relinquishment of tribal claims

"The Secretary may not expend on behalf of the Tribe any sums deposited in the Fund established pursuant to subsection (a) of this section unless and until he finds that authorized officials of the Tribe have executed appropriate documents relinquishing all claims to the extent provided by sections 1753 and 1759 of this title, including stipulations to the final judicial dismissal with prejudice of its claims.

"(e) Authorization of appropriation

"There is authorized to be appropriated $ 900,000 to be deposited in the Fund."

[15] Section 1752 (3) of title 25 of the United States Code defines "'private settlement lands'" as "(A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the secretary of the State of Connecticut in accordance with the agreement referred to in section 1751(d) of this title, and

"(B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on October 18, 1983 . . . ."

Section 1752(4) of title 25 of the United States Code defines "'settlement lands'" as "(A) the lands described in sections 2(a) and 3 of the Act To Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982, and

"(B) the private settlement lands."

Section 1752 (7) of title 25 of the United States Code defines "'reservation'" as "the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe."

Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe." [16] 25 U.S.C. § 1752 (7). "Settlement lands" are, in turn, defined to include approximately twenty acres of land contributed by the state as well as "private settlement lands." 25 U.S.C. § 1752 (4); see also Special Acts 1982, No. 82-31, §§ 2 (a) and 3.[17] Private settlement lands are defined as "eight hundred acres, more or less, of privately held land," as identified on a map filed with the state; 25 U.S.C. § 1752 (3) (A); and lands adjacent to the tribe's historic reservation known as Cedar Swamp. 25 U.S.C. § 1752 (3) (B). As we have noted previously, the Coachman property is located within those 800 acres designated as "private settlement lands."

The settlement act also delineates the scope of the relationship between the tribe and the state with respect to the reservation lands, including those private settlement lands taken into trust, by providing, inter alia, that "notwithstanding the provision relating to a special election in . . . the [Indian Civil Rights Act; 25 U.S.C. § 1326], the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act . . . ." 25 U.S.C. § 1755. This section contains the only reference to Indian country in the

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[16] The "existing reservation of the Tribe" was defined by chapter 824 of the Connecticut General Statutes, particularly General Statutes § 47-63, and apparently included approximately 180 to 200 acres of land in Ledyard.

[17] The Connecticut legislature also enacted an act to implement the settlement agreement that confirmed certain lands as a reservation, provided for the conveyance of lands to be added to the reservation, and provided that "none of the lands of the reservation . . . shall be subject to taxation by the state or any subdivision thereof." Special Act 82-31, § 2(c). "Reservation" is defined in that act as "the Mashantucket Pequot reservation in the town of Ledyard, owned by the Mashantucket Pequot tribe or held in trust by the United States for said tribe, including those lands conveyed to the tribe . . . by deed in May, 1896, and those lands conveyed to or acquired by said tribe as part of the settlement of its land claims in the town of Ledyard." Id., § 1.

settlement act. More generally, however, the settlement act also prescribes that "all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of [the settlement act] shall be applicable to the Tribe." 25 U.S.C. § 1758 (a). It is the relationship between these two provisions that gives rise to the first issue that we must address.

The plaintiff contends that the settlement act does not define Indian country and, therefore, § 1758 of the settlement act dictates that the generally applicable definition of Indian country under federal law set forth at 18 U.S.C. § 1151 controls our determination as to whether the Coachman property was Indian country before being taken into trust.[18] n18 Section 1151 provides in relevant part: "The term 'Indian country' . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent . . . (b) all dependent Indian communities within the borders of the United States . . . and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." The plaintiff contends that the Coachman property constituted a dependent Indian community before being taken into trust and, therefore, was Indian country.

The defendant claims that § 1151 does not apply because it is inconsistent with a narrower definition set forth in the settlement act, which does not include dependent Indian communities and is limited to the lands designated under the

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[18] Although § 1151 refers to criminal jurisdiction, it generally applies as well to questions of civil jurisdiction. See *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527, 118 S. Ct. 948, 140 L. Ed. 2d 30 (1998) ("although this definition by its terms relates only to federal criminal jurisdiction, we have recognized that it also generally applies to questions of civil jurisdiction such as the one at issue here").

act as the tribe's reservation. Specifically, the defendant points to the phrase in the settlement act that provides that "the reservation of the Tribe is declared to be Indian country . . . ." 25 U.S.C. § 1755. The defendant notes that the "reservation" is defined in the settlement act as "the existing reservation of the Tribe . . . and any settlement lands taken in trust by the United States for the Tribe." 25 U.S.C. § 1752 (7). Thus, the defendant contends that, because only the tribe's reservation qualifies as Indian country, and the settlement lands are included in the reservation only if they are taken into trust, the Coachman property could not be considered Indian country until it was taken into trust and thereby made part of the reservation. We agree with the plaintiff that § 1151 sets forth the applicable definition of Indian country.

The issue is whether § 1151, which clearly and expressly defines Indian country, is inconsistent with, and therefore supplanted by, the settlement act, specifically, § 1755. "In interpreting a statute, we begin with the language of the statute itself." (Internal quotation marks omitted.) *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 228 F.3d 88. Section 1755 is entitled "state jurisdiction over reservation" and provides: "Notwithstanding the provision relating to a special election in section 406 of the [Indian Civil Rights Act], the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act . . . ." On the one hand, we note that § 1755 does not expressly supplant § 1151, nor does it indicate that it is defining Indian country, although the settlement act does define several other land related terms. See 25 U.S.C. § 1752. Indeed, because the definition of Indian country is so well established under federal law, one might expect that the settlement act would have provided something to the effect

that, for purposes of the act, Indian country is, or includes only, the reservation of the tribe.[19] n19 On the other hand, a question arises as to why Congress would indicate that the tribe's reservation is Indian country if not intending to limit the meaning of Indian country because a reservation is only one of three ways of establishing Indian country under § 1151. See footnote 1 of this opinion. There are two reasonable explanations.

First, a "reservation" appears to have a broader meaning under the settlement act than that under § 1151 because, under the former, it includes not only the tribe's historic reservation, but also settlement lands taken into trust. Second, and more significantly, the meaning of the phrase "the reservation of the tribe is declared to be Indian country" becomes clear when read, as we are required to do, in the context of the statute as a whole, rather than in isolation. See *Food & Drug Administration v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-33, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000) ("[A] reviewing court should not

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[19] A simple logical analysis of the defendant's argument exposes its weakness: it is a question of the converse. To assert that all judges are attorneys is not to say that the converse is true, that all attorneys are judges. Similarly, the provision that the reservation is Indian country does not necessarily mean that the two are coextensive and that Indian country is only the reservation. Rather, the defendant asks that we find the phrase "the reservation of the Tribe is declared to be Indian country" to mean that "the reservation of the Tribe is declared to be the only Indian country." (Emphasis added.) This, however, logically cannot be said to be the plain meaning of the statutory language. To the extent that the language could be construed to prescribe the limits of Indian country under the settlement act, there is nothing in the act to preclude the tribe from establishing Indian country outside its reservation, if it is able to meet the criteria under § 1151. See *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 228 F.3d 90 (concluding that section of settlement act providing government shall not have trust responsibility over nonsettlement lands purchased with settlement funds did not preclude tribe from applying to have government hold such lands purchased with tribe's own funds in trust under generally applicable trust process pursuant to 25 U.S.C. § 465).

confine itself to examining a particular statutory provision in isolation. The meaning--or ambiguity--of certain words or phrases may only become evident when placed in context. . . . It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." [Citation omitted; internal quotation marks omitted.]).

Section 1755, when read as a whole, reflects that it addresses state jurisdiction over the reservation, conferring such jurisdiction to "the maximum extent" provided under those sections of the Indian Civil Rights Act that specifically address the state's jurisdiction over criminal offenses and civil causes of action. See 25 U.S.C. §§ 1321 through 1326.[20]

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[20] For example, 25 U.S.C. § 1321, entitled "Assumption by State of criminal jurisdiction," provides: "(a) Consent of United States; force and effect of criminal laws

"The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

"(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

"Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or

The Indian Civil Rights Act provides a mechanism to alter the general rule that the tribe and the federal government exercise concomitant jurisdiction over Indian country occupied by the tribe. See 25 U.S.C. §§ 1321 through 1326; see also *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520, 527 n.1, 118 S. Ct. 948, 140 L. Ed. 2d 30 (1998) (Venetie) ("generally speaking, primary jurisdiction over land that is Indian country rests with the Federal Government and the Indian tribe inhabiting it, and not with the States"). Under the Indian Civil Rights Act, however, a tribe occupying Indian country may, pursuant to a special election, consent to a state's exercise of jurisdiction over civil and criminal offenses. 25 U.S.C. § 1326. Section 1755 of the settlement act simply provides that the tribe and the federal government agree to allow the state to exercise jurisdiction over criminal offenses and civil actions, without a special election, over its reservation lands, including settlement lands held in trust by the United States. See *State v. Spears*, 234 Conn. 78, 88-94, 662 A.2d 80, cert. denied, 516 U.S. 1009, 116 S. Ct. 565, 133 L. Ed. 2d 490 (1995).

Section 1755 appears to reflect a compromise between the tribe and the state in that the tribe waived its right to withhold criminal and civil jurisdiction from the state over reservation lands in exchange for having available private settlement lands purchased, taken into trust and thereby added to its reservation. It does not address the jurisdictional issue presented here, where the tribe obtained title to the Coachman property with nonsettlement moneys, the federal government had not yet taken the lands into trust and, accordingly, the tribe was not entitled to claim reservation status of that land. As the Second Circuit recognized, "the settlement act was not . . . a comprehensive statute intended to settle once-and-for-all the extent of the [tribe's] sovereignty." *Connecticut ex rel. Blumenthal v. United States*

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statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." (Emphasis added.)

Dept. of the Interior, supra, 228, F.3d 90. Thus, absent a clear statement to the contrary, we will not presume that the settlement act was intended to be a resolution of all jurisdictional claims between the state and the tribe, even those that arise after and apart from the settlement act.

Indeed, such a construction would contravene basic rules of construction previously noted that are applicable to Indian sovereignty. "Statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." (Internal quotation marks omitted.) Id., 92; accord *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter*, supra, 217 Conn. 620 (ambiguities in statutes concerning dependent tribes to be resolved in favor of tribe).

Accordingly, we conclude that § 1755 simply provides a limited waiver of the tribe's jurisdiction, notwithstanding the provision of the Indian Civil Rights Act that otherwise would limit the state's adjudicatory jurisdiction to "Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose."[21] 25 U.S.C. § 1326. Therefore, the generally applicable definition of Indian country set forth in § 1151 is not necessarily inconsistent with the settlement act, and, thus, it is this definition that will inform our analysis as we decide whether the Coachman property qualified as Indian country prior to being taken into trust.

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[21] The Second Circuit Court of Appeals found "only ambiguity, contradiction, and silence" in the legislative history of the settlement act as to whether nonsettlement lands may be taken into trust if purchased with nonsettlement moneys. *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 228 F.3d 91. We have found it similarly so with respect to the definition of Indian country.

With the enactment of § 1151, "Congress has defined Indian country broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States."[22] *Oklahoma Tax Commission v. Sac & Fox Nation,* supra, 508 U.S. 123. It is undisputed that the Coachman property did not qualify as a formal reservation prior to being taken into trust or as an allotment.[23]

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[22] Prior the enactment of § 1151, "Indian lands were judicially defined to include only those lands in which the Indians held some form of property interest. . . . In 1948, however, with the enactment of the statutory definition of Indian country, Congress uncoupled reservation status from Indian ownership, and statutorily defined Indian country to include lands held in fee by non-Indians within reservation boundaries. . . . Thus, the mere conveyance of reservation property to non-Indians does not necessarily disestablish the reservation boundaries for jurisdictional purposes." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Thompson v. Franklin*, 15 F.3d 245, 250 (2d Cir. 1994).

[23] To the extent that the plaintiff claims alternatively that the Coachman property constituted an informal reservation before being taken into trust, we note that she has offered no independent analysis of that term and has limited her argument to the meaning of a dependent Indian community. We further note, however, that it appears that the test for informal reservations under 18 U.S.C. § 1151 (a) and for dependent Indian communities under § 1151 (b) requires the same analytical framework. The Tenth Circuit explained in this regard: "The test Justice Thomas announced for 18 U.S.C. § 1151 (b) Indian Country (dependent Indian community), in [*Alaska v. Native Village of Venetie Tribal Government*, supra, 522 U.S. 520] . . . correspond[s] with the factors Chief Justice Rehnquist articulated in [*Oklahoma Tax Commission v. Citizen Band, Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 111 S. Ct. 905, 112 L. Ed. 2d 1112 (1991)] as establishing Indian Country under 18 U.S.C. § 1151 (a) (reservation) when there is no formal reservation. In both instances, the court looked for federal set aside and superintendence. See [*Alaska v. Native Village of Venetie Tribal Government*, supra, 527]; [*Oklahoma Tax Commission v. Citizen Band, Potawatomi Indian Tribe of Oklahoma*, supra; 511]. Thus, the relationship between informal reservations and dependent Indian communities is not entirely clear under current case law. But based on Justice Thomas' holding, '[dependent Indian community] refers to a limited category of Indian lands that are neither reservations nor allotments' . . . and the court's earlier pronouncements such as, 'Congress has defined Indian country

We therefore consider whether the property qualified as a dependent Indian community under § 1151 (b) before being taken into trust. The term "dependent Indian community" is not defined by statute. Prior to 1998, state and federal courts had developed several different tests, many requiring a "textured balancing test" of several factors.[24] In *Alaska v. Native Village of Venetie Tribal Government*, supra, 522 U.S. 530, however, the United States Supreme Court expressly rejected the six factor test employed by the Ninth Circuit and established a two-pronged test requiring, (1) set aside and (2) superintendence. The court explained that "in

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broadly to include formal and informal reservations, dependent Indian communities, and Indian allotments, whether restricted or held in trust by the United States' . . . both dependent Indian communities and reservations, whether formal or informal, continue to exist under 18 U.S.C. § 1151 and Supreme Court jurisprudence." (Citations omitted.) *United States v. Roberts*, 185 F.3d 1125, 1133 (10th Cir. 1999), cert. denied, 529 U.S. 1108, 120 S. Ct. 1960, 146 L. Ed. 2d 792 (2000); but cf. *State v. Romero*, 2004 NMCA 12, 135 N.M. 53, 58, 84 P.3d 670 (App. 2003) (differentiating between terms in that § 1151 [a] does not require link between Indian title and status as Indian country while § 1151 [b] continues to do so), cert. granted, 135 N.M. 161, 85 P.3d 803 (2004).

[24] Prior to the decision in *Alaska v. Native Village of Venetie Tribal Government*, supra, 522 U.S. 520, this court had held that a "dependent Indian community is 'Indian country' if, (1) there is a bona fide tribe of Indians, and (2) the tribe has inhabited the land, has had 'Indian title' to it since 1790, and has maintained the same status and nature of its occupancy from 1790 to the time the cause of action arose." Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter, supra, 217 Conn. 620; id. (adopting test expressed in *State v. Dana*, 404 A.2d 551 [Me. 1979], cert. denied, 444 U.S. 1098, 100 S. Ct. 1064, 62 L. Ed. 2d 785 [1980]). In *State v. Sebastian*, 243 Conn. 115, 144-45 n.40, 701 A.2d 13 (1997), cert. denied, 522 U.S. 1077, 118 S. Ct. 856, 139 L. Ed. 2d 756 (1998), we acknowledged that this test had not been applied by any federal court, and that several other Circuit Courts of Appeal had adopted a different test that examined all or some of the following factors: (1) nature of the area; (2) the relationship of the inhabitants in the area to the Indian tribes and the federal government; and (3) the established practice of government agencies toward that area. We now follow the test laid out by the United States Supreme Court in Venetie.

enacting § 1151 (b), Congress indicated that a federal set-aside and a federal superintendence requirement must be satisfied for a finding of a 'dependent Indian community' . . . . The federal set-aside requirement ensures that the land in question is occupied by an 'Indian community'; the federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question." Id., 530-31. In order to prevail, therefore, the plaintiff must demonstrate that the Coachman property satisfies both of these requirements.[25]

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[25] We note that the Tenth Circuit continues to apply a "community of reference" analysis prior to determining whether land qualifies as a dependent Indian community under the set aside and supervision requirements of the test set forth in *Alaska v. Native Village of Venetie Tribal Government*, supra, 522 U.S. 530. Prior to that case, the Tenth Circuit had established a two step process known as the Watchman test for evaluating an assertion of dependent Indian community status: the first step requiring an analysis of whether the area proposed as a dependent Indian community is appropriate as a community of reference, and the second step requiring application of a four factor test to the community of reference in order to determine if that community is indeed a dependent Indian community. See *United States v. Adair*, 111 F.3d 770, 773-74 (10th Cir. 1997), citing *Pittsburg & Midway Coal Mining Co. v. Watchman*, 52 F.3d 1531, 1542-45 (10th Cir. 1995). After the United States Supreme Court's decision in Venetie, the Tenth Circuit concluded that, although Venetie may require some modification of the four factor balancing in the second step of the Watchman test, Venetie did not alter the propriety of Watchman's first step--the determination of the proper community of reference. *HRI, Inc. v. Environmental Protection Agency*, supra, 198 F.3d 1249 ("because Venetie does not speak directly to the issue . . . Watchman . . . continues to require a 'community of reference' analysis prior to determining whether land qualifies as a dependent Indian community under the set-aside and supervision requirements"); cf. *State v. Frank*, 2002 NMSC 26, 132 N.M. 544, 52 P.3d 404 (2002) (declining to incorporate community of reference inquiry into state's case law). In *Schaghticoke Indians of Kent, Connecticut, Inc. v. Potter*, supra, 217 Conn. 619, this court declined to follow the test established for determination of the existence of a dependent Indian community then adopted by the Tenth and Eighth Circuits, finding indiscriminate

We begin and end with the issue of whether the plaintiff has met her burden of proof with respect to the first requirement, the set aside. The plaintiff claims that the Coachman property was set aside by the federal government for the tribe by virtue of the fact that it is within the area designated by the settlement act as settlement lands to be added to the tribe's reservation. Therefore, according to the plaintiff, although the Coachman property was not part of the reservation before being taken into trust, it nonetheless was part of a set aside and hence part of a dependent Indian community once the tribe purchased the property. The defendant responds that the private settlement lands were not set aside, but, rather, that funds were set aside for the purchase of land to be taken automatically into trust under the terms of the act. Accordingly, the designation of private settlement lands under the act had no import after the settlement funds were exhausted unless property within the private settlement lands had been purchased with the funds and automatically taken into trust. The defendant also challenges the plaintiff's construction of the settlement act on the ground that it would result in a patchwork of jurisdictional authority, with the state having jurisdiction over private settlement lands taken into trust but lacking jurisdiction over private settlement lands not taken into trust. We agree with the defendant that the Coachman property was not set aside.

As we have noted previously, to qualify under the "limited category" of land that constitutes a dependent Indian community, the land "must have been set aside by the Federal Government for the use of the Indians as Indian land . . . ." *Alaska v. Native Village of Venetie Tribal Government*, supra, 522 U.S. 527. "Land is 'validly set apart for the use of Indians as such only if the federal government takes some

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application of their tests to Eastern Indian tribes inappropriate. Because we never adopted a community of reference test, we do not now import one into our *Venetie* analysis.

action indicating that the land is designated for use by Indians.' *Buzzard [v. Oklahoma Tax Commission*, 992 F.2d 1073, 1076 (10th Cir. 1993)]." *Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co.*, 89 F.3d 908, 915 (1st Cir. 1996). "The underlying purpose of the federal set-aside requirement is two-fold: (1) it ensures that the land in question is occupied by an Indian community . . . and (2) it reflects the fact that because Congress has plenary power over Indian affairs . . . some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country." (Internal quotation marks omitted.) *Thompson v. Franklin*, 127 F. Supp. 2d 145, 153 (N.D.N.Y. 2000), quoting *Alaska v. Native Village of Venetie Tribal Government*, supra, 531 n.6.

Although the precise circumstances necessary to satisfy a set aside have not been clearly delineated by the courts, prior case law examining the issue provides some illumination on the matter. For example, land accepted into trust pursuant to § 465 of the Indian Reorganization Act is "set apart for the use of Indians by the federal government because it can be obtained only by filing a request with the Secretary of the Interior . . . who must consider, among other things, the Indian's need for the land . . . and the purposes for which the land will be used . . . . If the request is approved, the United States holds the land as trustee." (Citations omitted; internal quotation marks omitted.) *United States v. Roberts*, 185 F.3d 1125, 1132 (10th Cir. 1999), cert. denied, 529 U.S. 1108, 120 S. Ct. 1960, 146 L. Ed. 2d 792 (2000); id. (noting that "trust status can demonstrate both federal set aside and superintendence"). A set aside was recognized when Congress required land to be taken into trust that was acquired with a lump sum fund designated for the acquisition of unspecified land for the use and benefit of a particular tribe. *HRI, Inc. v. Environmental Protection Agency*, supra, 198 F.3d 1251-53. Similarly, land was found to be validly set aside when the federal government held in trust land

designated as an Indian "colony," which had been purchased with funds appropriated by Congress to establish a permanent settlement for tribes scattered across the state of Nevada, under the government's supervision, with the specific intent to afford the tribal members the same protection as that given to members living in settlements that constitute reservations. See *United States v. McGowan*, 302 U.S. 535, 537, 58 S. Ct. 286, 82 L. Ed. 410 and n.4 (1938).

A set aside also has been found in the absence of a trust relationship. Indian pueblos scattered across 17,000 acres in New Mexico were deemed to constitute a dependent Indian community when they were held in communal, fee simple ownership under grants from the King of Spain made during the Spanish sovereignty, Congress confirmed by statute the tribe's ancestral title after the acquisition of that territory by the United States, and public lands adjacent to several of the pueblos had been reserved by executive orders for tribal use and occupancy. See *United States v. Sandoval*, 231 U.S. 28, 39, 48-49, 34 S. Ct. 1, 58 L. Ed. 107 (1913).[26]

By contrast, a court found no valid set aside with respect to land on which a school was situated for the exclusive purpose of educating Native American children, when the land was owned by the federal government, exclusively administered by the Bureau of Indian Affairs and no tribal government had authority to determine the use of land or to transfer the land. See *United States v. M.C.*, 311 F. Supp. 2d 1281, 1295 (D.N.M. 2004).[27] Similarly, a court determined

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[26] We note that the historical and revision notes to the enactment of § 1151 indicate that Congress based the definition of Indian country upon *United States v. Sandoval*, supra, 231 U.S. 28, and *United States v. McGowan*, supra, 302 U.S. 535.

[27] Although the New Mexico Court of Appeals reached the opposite conclusion with respect to the same land; *State v. Dick*, 1999 NMCA 62, 127 N.M. 382, 981 P.2d 796 (App.), cert. granted, 127 N.M. 391, 981 P.2d 1209 (1999), cert. quashed, 129 N.M. 208, 4 P.3d 36 (2000); the federal District Court rejected that conclusion, holding that because the

that there was no intent to set aside land even when a tribe received fee title to land to be used for Indian housing, the tribe had a pending petition for the government to take the land into trust, the land was situated adjacent to settlement lands already taken into trust pursuant to a settlement agreement adopted by Congress, and the United States Department of Housing and Urban Development had recognized the tribe's housing authority and had provided financing for both the land purchase and the housing project. See *Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co.*, 89 F.3d 908, 911, 919-22 (1st Cir. 1996).

Turning to the case at hand, several aspects of the settlement act reflect that, once the settlement funds were disbursed and any available property within the private settlement lands had been purchased with those funds prior to the disbursement, the settlement act did not ensure that the remaining private settlement lands such as the Coachman property, were occupied by, and hence set aside for, the tribe. Indeed, in many if not all respects, the tribe's relationship thereafter to the remaining property in the private settlement lands was no different than any other potential private land purchaser.[28] First and foremost, the settlement act extinguished the tribe's aboriginal or tribal

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state appeals court had failed to apply properly the test required under the Tenth Circuit case law for making that determination and further noting that the federal government had taken the opposite position in that case that the land was Indian country. *United States v. M.C.*, supra, 311 F. Supp. 2d 1287, 1297.

[28] The plaintiff asserts as evidence of the federal government's superintendence over the Coachman property that the nonintercourse provisions of the Trade and Intercourse Act of 1790; 25 U.S.C. § 177; barred the tribe from conveying that property, even before it was taken into trust, without the government's consent. If the plaintiff is correct, then the tribe obviously would not be situated identically to a nontribal owner of private settlement lands. We do not reach any conclusion as to this assertion, however, in light of our resolution of the set aside issue.

title[29] to any of the private settlement lands as a condition of receiving the settlement fund. See 25 U.S.C. § 1753.[30]

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[29] Aboriginal or tribal title "refers to the right of the original inhabitants of the United States to use and occupy their aboriginal territory. . . . It exists at the pleasure of the United States, and may be extinguished by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise. . . . Extinguishment terminates corresponding use and occupancy rights . . . except where such rights are expressly or impliedly reserved in a treaty, statute or executive order." (Citations omitted; internal quotation marks omitted.) *Confederated Tribes of Chehalis Indian Reservation v. Washington*, 96 F.3d 334, 341 (9th Cir. 1996).

[30] Section 1753 of title 25 of the United States Code provides in relevant part: "(a) Approval and ratification of prior transfers

"Any transfer before October 18, 1983, from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before October 18, 1983, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790 . . . and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

"(b) Extinguishment of title

"By virtue of the approval and ratification of a transfer of land or natural resources effected by subsection (a) of this section, any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian, Indian nation, or tribe or band of Indians, to any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section shall be regarded as extinguished as of the date of such transfer.

"(c) Extinguishment of claims

"By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, any claim (including any claim for damages for trespass or for use and occupancy) by, or on behalf of, the Tribe or any member of the Tribe or by any other Indian, Indian nation, or tribe or band of Indians, against the United States, any State or subdivision thereof or any other person which is based on--

"(1) any interest in or right involving any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section, or

Therefore, any subsequent claim to tribal title would have to arise as a result of some other grant under the settlement act or some circumstance after the passage of the settlement act, neither of which exists.

Second, the act provided a limited window of opportunity for the tribe to use the settlement fund to obtain private settlement lands. The settlement act mandates that "not less than $ 600,000 of the [$ 900,000 settlement fund] shall be available until January 1, 1985, for the acquisition by the Secretary [of the Interior] of private settlement lands." 25 U.S.C. § 1754 (b) (2). After the lapse of this limited period--between the October, 1983 enactment of the act and the January, 1985 deadline--all unused funds were to be disbursed to the tribe for economic development purposes. 25 U.S.C. § 1754 (b) (3). Once the January, 1985 deadline lapsed and funds were disbursed, the act provided that "the United States shall have no further trust responsibility to the Tribe or its members with respect to the sums paid, any subsequent expenditures of these sums, or any property *other than private settlement lands or services purchased with these sums*." (Emphasis added.) 25 U.S.C. § 1754 (b) (5). In marked contrast, under the Massachusetts' Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987; 25 U.S.C. §§ 1771 through 1771i; Congress "appropriated $ 2,250,000 for such fund to remain *available until expended*."[31] (Emphasis added.) 25 U.S.C. § 1771a (b).

"(2) any aboriginal title to land or natural resources the extinguishment of which was effected by subsection (b) of this section,

"shall be regarded as extinguished as of the date of any such transfer. . . ."

[31] Between 1978 and 1994, the federal government formally sanctioned numerous settlement agreements between various states and Indian tribes intending to resolve tribal claims clouding title to privately held land, similar to those asserted by the Mashantucket Pequot tribe. See Rhode Island Indian Claims Settlement Act, 25 U.S.C. §§ 1701 through 1716 (enacted September 30, 1978); Maine Indian Claims Settlement Act of

The settlement act does not mandate, however, that the Secretary of the Interior purchase the private settlement lands within the specified period, nor does it mandate that the tribe apply to use the funds for such a purpose. Compare 25 U.S.C. § 1752 (3) (defining private settlement lands solely by reference to map with no express purchase requirement) with 25 U.S.C. § 1702 (d) (under Rhode Island Indian Claims Settlement Act, "'private settlement lands' means approximately nine hundred acres of privately held land . . . that are to be acquired by the Secretary from certain private landowners" [emphasis added]) [32] and 25 U.S.C. § 1724 (a), (c) and (d) (under Maine Indian Claims Settlement Act of 1980, allocating $ 27 million as "claims settlement fund" and $ 54 million as "land acquisition fund"; mandating that land acquisition fund be expended for acquiring land or natural resources and "no other purpose"). Indeed, there is no provision for the tribe to acquire an option or a right of first refusal to make the tribe's acquisition of the private settlement lands more likely.

Third, the focus of the settlement act clearly is on the

1980, 25 U.S.C. §§ 1721 through 1735; Florida Indian Land Claims Settlement Act of 1982, 25 U.S.C. §§ 1741 through 1749; Wampanoag Tribal Council of Gay Head, Inc., Indian Claims Settlement Act of 1987 (Massachusetts), 25 U.S.C. §§ 1771 through 1771i; Seminole Indian Land Claims Settlement Act of 1987 (Florida), 25 U.S.C. §§ 1772 through 1772g; Puyallup Tribe of Indians Settlement Act of 1989 (Washington), 25 U.S.C. §§ 1773 through 1773j; Mohegan Nation of Connecticut Land Claims Settlement Act of 1994, 25 U.S.C. §§ 1775 through 1775h. To the extent that we cite to any of these settlement acts, we do not intend to suggest whether any of these other acts would in fact establish the set aside required for a dependent Indian community. We cite to them merely to illustrate by contrast the shortcomings of the present settlement act with regard to satisfying the set aside requirement with respect to lands not held in trust.

[32] The First Circuit noted in *Carcieri v. Norton*, supra, 423 F.3d 45, 50 n.2 (1st Cir. 2005) that, in accordance with the Rhode Island Indian Claims Settlement Act, 900 acres of privately held lands in a designated area were in fact purchased for the tribe's benefit.

disbursement of the settlement fund, not the purchase of the land.[33] The act fully accounts for use of the settlement fund--if funds are used to purchase property within settlement lands, the property is taken into trust; 25 U.S.C. § 1754 (b) (7); if funds are used to purchase property outside settlement lands, the property is not taken automatically into trust and the tribe holds it in fee. 25 U.S.C. § 1754 (b) (8). Whatever settlement funds that are not used for the purchase of land are designated for economic development. 25 U.S.C. § 1754 (b) (2). By contrast, the act does not address all of the settlement lands in that it makes no provision for private settlement lands that are purchased with nonsettlement moneys, as in the present case. See *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 228 F.3d 88 (noting that settlement act "does not apply" to property purchased with private or tribal funds, either inside or outside private settlement area). This treatment differs from the Maine Indian Claims Settlement Act of 1980, wherein Congress accounted for all of the land within the designated area by authorizing the Secretary to take into trust not only property within the delineated area, but also property within that area that is purchased by or given to the tribe. See 25 U.S.C. § 1724 (d). The absence of such a provision is telling. Compare *Connecticut ex rel. Blumenthal v. United States Dept. of the Interior*, supra, 90 ("We have compared both statutes and find in the Maine Settlement Act an obvious demonstration that Congress knew how to prohibit the Secretary [of the Interior] from taking into trust any lands outside of specifically designated settlement lands. The absence of an analogous provision in the Settlement Act at issue in this case confirms that the Settlement Act was not meant to eliminate the Secretary's power under the [Indian Reorganization Act] to take land purchased without settlement funds into trust for the benefit of the Tribe.").

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[33] See footnote 14 of this opinion for the relevant text of 25 U.S.C. § 1754, which delineates the scope and the use of the fund.

To the extent that the legislative history can illuminate any plausible ambiguity as to this issue, it shows that the parties were well aware that some of the property owners within the private settlement lands would choose not to sell their property to the tribe within the time allotted, and the agreement was designed to accommodate the nontribal ownership. For example, in a prepared statement presented as part of his testimony before the congressional committee, United States Representative Sam Gejdenson explained that the property owners within the designated area had reserved their right not to sell their property and noted that "not one homeowner will be displaced." Hearing on Senate Bill Nos. 2294 and S. 2719 before the United States Senate Select Committee on Indian Affairs, 97th Cong., 2d Sess., p. 63 (July 14, 1982); see also 25 U.S.C. § 1754 (b) (9) (land to be acquired only if owner agrees to price and other terms of sale). Similarly, Jackson T. King, Jr., an attorney representing the nontribal property owners of the private settlement lands, explained in a prepared statement: "A few landowners insist on retaining their property, and this has been fully discussed with the tribe and a settlement can be achieved wherein these landowners will be able to retain their property and their title will be cleared by the passage of this legislation. No landowner will lose his or her residence." Hearing on Senate Bill Nos. 2294 and 2719 before the United States Senate Select Committee on Indian Affairs, supra, p. 76. The Coachman property is apparently one of these parcels of land that the owner chose not to sell while settlement funds still were available. In light of the unequivocal evidence before Congress as to holdout landholders within the private settlement lands, we cannot read Congress' failure to provide any mechanism for the tribe to acquire such lands should they later become available as a mere oversight, as the plaintiff suggests.

We are mindful of the statements made on behalf of the

tribe indicating that the tribe may have viewed the settlement as an agreement for land, not for money, and that it expected almost all of the settlement lands to be purchased with the allotted funds. See id., p. 77, remarks of Thomas Tureen, legal counsel for the tribe ("For Indians, money is not the same thing as land . . . . This settlement is designed to restore the land base to them with a minimum disruption of the [tribe] or other people."). The tribe's hopes and expectations as to the land, however, are enforceable only to the extent that they are embodied in the settlement act. Accordingly, the legislative history does not reflect a clear intention by Congress to set aside as Indian country property within the private settlement lands that the nontribal landholders reserved the right not to sell and therefore was not taken into trust.

In sum, the settlement act ratified all property transfers prior to the settlement act, extinguished the tribe's aboriginal title to the private settlement lands, lifted any cloud on the title of the Coachman property, and thereby permitted the owner of that property to convey it to any purchaser for any purpose that the purchaser chose. Put simply, it is too far a stretch to conclude that establishing a finite settlement fund for economic development and land purchase evidences a federal intent to give the tribe presumptive sovereignty over the Coachman property by making it Indian country. "It seems implausible that a tribe could obtain a valid claim to Indian country--and thus presumptive sovereignty rights--over theretofore privately-held lands just by purchasing them"; *Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co.*, supra, 89 F.3d 922; without any opportunity for notice to the state and federal governments or the consequent opportunity to negotiate agreements with respect to jurisdiction over land purchased many years after the settlement fund's allocation for land purchase had expired. See id. Viewed more reasonably, the federal action here at best evidences an intent to assist in the economic

development of the tribe and to allow it to acquire those lands within the designated area that the private landholders had agreed to sell to the tribe during settlement negotiations without necessarily incurring a commitment to exercise jurisdiction over all activities on that land, whenever acquired by the tribe, to the presumptive exclusion of state laws. As such, there is no set aside. Thus, to the extent that the state expressed concern about creating a patchwork of jurisdiction under the plaintiff's construction of the settlement act, our conclusion avoids any such possible implications. In light of this conclusion, we therefore need not determine whether the Coachman property was under the superintendence of the United States before being taken into trust.

II

The plaintiff also claims that the assessment of state income tax on enrolled members of the tribe living in the state violates the federal constitution, absent the express consent of Congress. Essentially, the plaintiff contends that, even if she did not live in Indian country, the Indian Gaming Regulatory Act; 25 U.S.C. §§ 2701 through 2721 (2000) (gaming act); preempts state law and precludes the imposition of state income taxes on the individual members of the tribe. Specifically, the plaintiff cites: (1) the section of the gaming act, which provides that "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in Class III [gaming] activity"; 25 U.S.C. § 2710 (d) (4); and (2) the compact negotiated by the tribe and the state pursuant to the gaming act, which similarly provides that "nothing in this Compact shall be deemed to authorize the State to impose any tax, fee, charge, or assessment upon the Tribe or any Tribal gaming operation except for charges expressly

authorized pursuant to Section 11 of the Compact [dealing with costs for State regulatory operations and law enforcement]"; Mashantucket Pequot Tribe-State of Connecticut Gaming Compact, 56 Fed. Reg. 24,996 (May 31, 1991).

This argument merits little discussion based on two fundamental principles set forth by the United States Supreme Court. First, "absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State." *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973). Thus, unless expressly prohibited by federal law, the defendant may impose its income tax on the plaintiff. Second, a tax on tribal members employed by the tribe is not an impermissible tax on the tribe itself. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 464-67, 115 S. Ct. 2214, 132 L. Ed. 2d 400 (1995).

The plaintiff's argument fails for the simple reason that the gaming act does not expressly preempt state taxation of income received by tribal members from reservation gaming activity. "In the absence of any express provision indicating such an intent on the part of Congress . . . [Supreme Court case law] lead[s] inexorably to the conclusion that the [gaming act] does not preclude the [local taxing authority] from imposing its income tax on the [plaintiffs] during periods when they resided within the state but [outside of Indian country]." (Citations omitted.) *Jefferson v. Commissioner of Revenue*, 631 N.W.2d 391, 397 (Minn. 2001), cert. denied, 535 U.S. 930, 122 S. Ct. 1304, 152 L. Ed. 2d 215 (2002), citing *Oklahoma Tax Commission v. Chickasaw Nation*, supra, 515 U.S. 450, *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980), and *Mescalero Apache Tribe v. Jones*,

supra, 411 U.S. 145.

III

Finally, the plaintiff argues that § 12-702 (c) (1)-3 of the Regulations of Connecticut State Agencies; see footnote 6 of this opinion; under which the defendant determined that the plaintiff was not entitled to an exemption as an enrolled member of a federally recognized tribe, is void due to an impermissible delegation of legislative authority to the defendant. This regulation, however, merely codifies federal law. Because we have determined that the plaintiff did not reside in Indian country during the relevant time period and is therefore not exempt from local taxation under the applicable federal law, she is not entitled to the exemption expressed in § 12-702 (c) (1)-3 as a matter of law. We, therefore, are left with no indication of what practical relief would be afforded to the plaintiff should we rule in her favor on this claim. Accordingly, we decline to address it further. See, e.g., *Schoonmaker v. Lawrence Brunoli, Inc.*, 265 Conn. 210, 233 n.24, 828 A.2d 64 (2003).

The judgment is affirmed.

In this opinion the other justices concurred.

Jo-Ann Dark-Eyes v. Commissioner of Revenue Services

CV020512959S

SUPERIOR COURT OF CONNECTICUT, JUDICIAL DISTRICT OF NEW BRITAIN, TAX SESSION AT NEW BRITAIN

2003 Conn. Super. LEXIS 3063

October 30, 2003, Decided
October 30, 2003, Filed

JUDGES: Arnold W. Aronson, Judge Trial Referee.

OPINION BY: Arnold W. Aronson

OPINION: MEMORANDUM OF DECISION

The issue in this tax appeal is whether the plaintiff, Jo-Ann Dark-Eyes (Dark-Eyes), a member of the Mashantucket Pequot Indian Tribal Nation (Tribe), residing on property owned by the Tribe but located off the Tribe's reservation, was residing in "Indian country" for the calendar years of 1996, 1997 and 1998, and therefore not subject to the payment of the Connecticut state income tax on income earned from the Tribe during those tax years. The reason why this is an issue is that constitutional principles govern the state's lack of power to impose an income tax on Indians living in "Indian country," but have the power to tax Indians living outside of "Indian country." 2 Hellerstein & Hellerstein, State Taxation (3rd Ed.) § 22.07(1)(2). See also *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 115 S.Ct. 2214, 132 L.Ed.2d 400.

"Indian tribes have an ambiguous status in American law.

They are neither states nor foreign governments, but for many purposes are sovereign nations. In describing the Indians as 'domestic, dependent nations,' Chief Justice Marshall recognized that the conditions of the Indians in relation to the United States is perhaps unlike that of any other two people in existence." (Quotation marks and citations omitted.) Taxation of American Indians, Vol. 3, Pomp & Oldman, State & Local Taxation, Fourth Ed. Revised 2001, Ch. 15, p. 15-1.

Dark-Eyes is an enrolled member of the Tribe. During the period of 1996, 1997 and 1998, Dark-Eyes earned income from the Mashantucket Pequot Tribal Council. For the taxable years of 1996, 1997 and 1998, Dark-Eyes filed a resident Connecticut income tax return claiming that, as an enrolled member of the Tribe, she was exempt from the Connecticut income tax on the grounds that she resided in "Indian country," and requested a refund for the taxable year of 1996 and an exemption from future state income taxation on these grounds.

The Commissioner concluded that Dark-Eyes was not residing on land taken into trust by the United States for the benefit of the Tribe as part of its reservation until after August 25, 1998. Therefore, she was not exempt from the payment of the Connecticut income tax for the years in question because she was not living in "Indian country." See Stipulated Exhibit 13, Department of Revenue Services Informational Publication 99 (29), "Connecticut Income Tax Obligations of Enrolled Members of The Mashantucket Pequot Tribe."

The parties have stipulated to the following facts:

1. In 1983, the United States Congress enacted the Mashantucket Pequot Indian Land Claims Settlement Act ("Settlement Act") for the purpose of implementing a

settlement agreement in a civil action initiated by the Tribe to recover "Indian lands" against individual private property owners in Ledyard, Connecticut. 25 U.S.C. 1751 *et seq.*

2. The Settlement Act extended federal recognition to the Tribe. 25 U.S.C. § 1758.

3. In addition, the Settlement Act established an initial reservation for the Tribe and a settlement fund pursuant to which the Tribe could purchase land from willing sellers within a statutorily designated settlement area of approximately 2200 acres (the "settlement lands").[34] Certain lands purchased with settlement funds were deeded directly to the United States in trust for the Tribe. Certain lands purchased by the Tribe within the settlement lands with funds other than settlement funds have been transferred to the United States to be held in trust for the Tribe for its reservation.[35]

4. Since 1983, the Tribe has purchased some but not all of the land within the settlement lands and the United States has accepted some but not all of the settlement lands in trust for

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[34] Although this stipulation recites 2200 acres, the plaintiff acknowledges and documents the "settlement lands" to encompass only 800 acres. See plaintiff's reply memorandum dated September 18, 2003, p. 2-3 ("The Tribe sued for 800 acres and relinquished its claim to those 800 acres in exchange for the right to purchase 800 acres within an area defined by Congress"). See also exhibit 13, Stipulation Re: Exhibits dated June 2003 showing a map outlining the 800 acres.

[35] There are two components to the definition of "settlement lands." "Settlement lands" means (1) eight hundred acres of privately held lands identified on the map filed with the secretary of state and land known as Cedar Swamp adjacent to the Mashantucket Pequot reservation as it existed on October 18, 1983, both lands called "private settlement lands," and (2) "lands described in Sections 2(a) and 3 of the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982." 25 U.S.C. § 1752 Definitions.

the benefit of the Tribe.

5. At all times relevant to this complaint, the plaintiff was a Connecticut resident and an enrolled member of the Tribe.

6. From November 1, 1993 through September 30, 1998, the plaintiff resided at 59 Coachman Pike, in Ledyard, Connecticut.

7. From August 3, 1993 through August 25, 1998, the Tribe owned the 59 Coachman Pike property, which was located within the settlement lands, in fee simple.

8. On August 25, 1998, the Tribe conveyed the 59 Coachman Pike property to the United States to be held in trust for the Tribe as part of its reservation.

9. Prior to August 25, 1998, the Tribe paid property taxes on the 59 Coachman Pike property to the town of Ledyard. The plaintiff had no control over whether the Tribe paid property taxes on the subject property to the town of Ledyard.

10. From October 1, 1998 through December 31, 1998, the plaintiff resided at 1004 Shewville Road, in Ledyard, Connecticut.

11. The Tribe owns 1004 Shewville Road, and has owned that property since July 14, 1993.

12. The 1004 Shewville Road property is outside of, but close to, the settlement lands boundary established by the Settlement Act. The Tribe did not use settlement funds as defined in the Settlement Act to purchase this property.

13. For the taxable years 1996, 1997 and 1998 (the "taxable years"), the plaintiff received earned income from the following payers.

1996 Mashantucket Pequot Tribal Council -- $ 1,307,713

1997 Mashantucket Pequot Tribal Council -- $ 1,666,950

1998 Mashantucket Pequot Tribal Council -- $ 654,381

"Land in Indian country, including reservation land, is not subject to state taxation absent express congressional authorization. The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union. *Worcester v. Georgia*, 31 U.S. 515, 557, 8 L.Ed. 483 . . . (1832); see also *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 151, 65 L.Ed.2d 554, 100 S.Ct. 2578 (1980); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 765, 85 L.Ed.2d 753, 105 S.Ct. 2399 . . . (1985) (The court consistently has held that it will find the Indians' exemption from state taxes lifted only when Congress has made its intention to do so unmistakably clear); *McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 173-81, 36 L.Ed.2d 129, 93 S.Ct. 1257 . . . (1973); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148, 36 L.Ed.2d 114, 93 S.Ct. 1267 . . . (1973)." (Citations omitted; internal quotation marks omitted.) *Oneida Indian Nation of New York v. Sherrill*, 337 F.3d 139, 154 (2nd Cir. 2003). This concept comes from the historical claim of Indians to title and fee ownership of aboriginal lands that Indians have inhabited from time immemorial, and therefore any tribal lands which Indians reacquire, become Indian country. *Id.*

However, in Connecticut, as a result of aboriginal land claims by the Mashantuckets to fee ownership of private lands in the town of Ledyard, Congress enacted the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1751 *et seq.* The purpose of this act was to resolve claims of

the Mashantuckets to certain tribal lands and to remove the cloud on title to privately held lands in the town of Ledyard. 25 U.S.C. § 1751(b) and (c). As a result of this Settlement Act, the state of Connecticut conveyed twenty acres of an ancient Pequot Burial Ground located in a state park to the Mashantuckets as reservation land in addition to other reservation land described in No. 82-31 of the 1982 Special Acts, An Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claims, and the Mashantuckets in exchange gave up their claim of aboriginal title to all other privately owned lands in the town of Ledyard. 25 U.S.C. § 1753(a), (b) and (c). See *Mashantucket Pequot Tribe v. McGuigan*, 626 F.Supp. 245, 246-47 (D.Conn. 1986).[36]

Historically, in dealing with Indian tribal members residing in the town of Ledyard, all of their rights of ownership of land flows from the so-called Settlement Act. "The Settlement Act extinguished the Tribe's claims to hundreds of acres of land. See 25 U.S.C. § 1753. In exchange, the Settlement Act: (1) provided for federal recognition of the Tribe, [see 25 U.S.C. § 1758]; (2) established a $ 900,000 fund (the 'settlement fund'), designed principally for the purchase of private property, [see 25 U.S.C. § 1754]; and (3) identified boundaries within which lands acquired by the Tribe would be held in trust by the Secretary [of Interior] and would constitute the Tribe's reservation, the so-called settlement lands, [see 25 U.S.C. § 1752(3), (4) & (7)]."

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[36] "The tribe is the successor to the claims of Western Pequot Tribe of Indians asserting right, title or interest in and to public and private lands allegedly originally the property of the tribe and wrongfully misappropriated from the tribe in violation of the Constitution and the laws of the United States, including, without limitation, the Trade and Intercourse Act of 1790, Act of July 22, 1790 (Ch. 33 Sec. 4, 1 Stat. 137, 138), and the Amendments thereto. These claims were the subject of a lawsuit in this court, *Western Pequot Tribe of Indians v. Holdridge Enterprises, Inc.*, Civil H-76-193." *Mashantucket Pequot Tribe v. McGuigan, supra*, 626 F. Supp. 246.

Connecticut v. U.S. Department of Interior, 228 F.3d 82, 86 (2nd Cir. 2000).

Following the passage of the Settlement Act and the extinguishment of the Tribe's claim to privately held land in the town of Ledyard, members of the Tribe resided in Ledyard either on:

(1) Reservation land containing the original land conveyed to the Tribe by the state of Connecticut pursuant to the Settlement Act;[37]

(2) Land within the eight hundred acres designated as settlement lands purchased with settlement funds and incorporated within the reservation by virtue of the Secretary of the Interior holding such land in trust. See *Connecticut v. U.S. Department of Interior*, *supra*, 228 F.3d 87;

(3) Land purchased by the Tribe with settlement funds but outside the settlement lands;[38]

(4) Land purchased by the Tribe located outside of the settlement lands with non-settlement funds.[39]

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[37] See 25 U.S.C. § 1751(f), and S.A. 82-31 § 1.

[38] "Non-settlement lands acquired with settlement funds are to be held in fee by the Tribe and the United States shall have no further trust responsibility with respect to such land." *Connecticut v. U.S. Department of Interior*, supra, 228 F.3d 87.

[39] The Settlement Act does not apply to land purchased by the Tribe with funds that are not settlement funds and located outside the boundaries of the settlement lands. However, the Secretary of Interior may, under the 1934 Indian Reorganization Act, 25 U.S.C. § 461 et seq. (the IRA), incorporate these lands within the reservation as trust property for the benefit of the Tribe. The consequence of this is that the land taken in trust for the Tribe is not subject to state and local taxation; local zoning and regulatory requirements; or state criminal and civil jurisdiction unless the Tribe consents to jurisdiction. *Connecticut v. U.S. Department of Interior*, *supra*, 228 F.3d 85-86, 88.

Land that is considered to be "Indian country" under the Settlement Act is that land which is part of the Tribe's reservation.[40]

Dark-Eyes' residence at 59 Coachman Pike was located within the settlement lands but the residence was not purchased with settlement funds. The significance of this is that although Congress identified the eight hundred acres which could become part of the Tribal reservation, it could only become part of the reservation if the land were purchased with settlement funds and the Secretary took the land in trust by the United States for the Tribe.[41] The settlement agreement contemplates that the eight hundred acres owned by private individuals including non-Indians could be acquired by the Tribe if the private owners agreed to sell. If the Tribe purchases the land within the eight hundred acres, the question is whether the purchase was made with settlement funds or private funds. If the purchase was made with settlement funds, then the Secretary is authorized by the Settlement Act to take the land so purchased in trust as part of the reservation. *Connecticut v. U.S. Department of Interior, supra*, 228 F.3d 88. However, if the privately held land within the eight hundred acres was purchased with private funds, as in this case, such land could not become a part of the reservation unless and until the Secretary uses his powers given to him by the IRA to acquire the land in trust for the Tribe since no such authority exists within the Settlement Act to do so. *Id.*, 88.

In *Connecticut v. U.S. Department of Interior, supra*, the Tribe purchased 165 acres of land outside of the settlement lands with funds that were not supplied by the settlement funds. The Tribe sought to have the Secretary take the 165

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[40] 25 U.S.C. § 1755 provides that "the reservation of the Tribe is declared to be Indian country . . ."
[41] 25 U.S.C. § 1752(7).

acres of land in trust as part of the Indian reservation. The state of Connecticut and the towns of North Stonington, Ledyard and Preston brought suit to enjoin the Secretary from doing so. The argument of the plaintiffs was that allowing the Tribe to take in the 165 acres of land in this fashion would allow the Tribe to purchase any land outside of the settlement lands and include that purchase within the reservation thereby depriving towns of control of zoning, regulations and taxes. The Circuit court concluded that the Settlement Act did not define, once and for all, the confines of the Tribe's reservation as being the eight hundred acres, but rather settled a specific dispute between the Tribe, the towns and title to lands of private property owners. *Id.*, 90. The Settlement Act was a quid pro quo, with the Tribe giving up claims to title of lands in exchange for twenty acres of land conveyed by the state of Connecticut to the Tribe, and a settlement fund of $ 900,000 provided by Congress to allow the Tribe to purchase land within the eight hundred acres and add this land to the reservation. With this understanding of the Settlement Act, the court in *Connecticut* saw no prohibition on the Tribe purchasing land anywhere in Connecticut with its own funds and asking the Secretary to take that land in trust for the benefit of the Tribe pursuant to the IRA. *Id.*, 90-91.

The present property located at 59 Coachman Pike cannot be construed as "Indian country" at the time that Dark Eyes resided on the premises because the property, although located within the settlement lands, was purchased by the Tribe with non-settlement funds and the property had not been conveyed to the United States in trust for the Tribe. We note, as part of the stipulation of the parties, the Tribe did convey this property to the United States in trust for the benefit of the Tribe on August 25, 1998 after the plaintiff moved her residence to 1004 Shewville Road. Once 59 Coachman Pike was conveyed to the United States, the land became part of the reservation, and was therefore "Indian

country" free from taxation by the state of Connecticut and the town wherein the land was located. Until the conveyance of 59 Coachman Pike to be held in trust by the United States, the plaintiff's residence was not in "Indian country," and therefor she was not exempt from the obligation to pay a state income tax on her earnings during the years in question.

The plaintiff raises an additional issue that the subject property at 59 Coachman Pike is located within a "dependent Indian community" and therefore comes within the definition of "Indian country" found in 18 U.S.C. § 1151.[42] Section 1151 defines "Indian country" in three separate ways. Of relevance here is Sec. 1151(b), which defines "Indian country" as "all dependent Indian communities within the borders of the United States whether within or without the limits of a state . . ." In *Alaska v. Native Village of Venetie*, 522 U.S. 520, 527, 118 S. Ct. 948, 140 L. Ed. 2d 30 (1998), the Supreme Court interpreted the term "dependent Indian community" for the first time, stating that "it refers to a limited category of Indian lands that . . . satisfy two requirements--first, they must have been set aside by the Federal Government for the use, of the Indians as Indian land; second, they must be under federal superintendence." This interpretation "indicates a change in the focus of the 'dependent Indian community' analysis by shifting the emphasis from the inhabitants and their day-to-day relationship with the [federal] government to a land-based inquiry." (Internal quotation marks omitted.) *Thompson v. County of Franklin*, 127 F.Supp.2d 145, 155 (N.D.N.Y. 2000).

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[42] "While § 1151 is concerned, on its face, only with criminal jurisdiction, the [Supreme] Court has recognized that it generally applies as well to questions of civil jurisdiction." *DeCoteau v. District County Court for Tenth Judicial District*, 420 U.S. 425, 427 n.2, 95 S.Ct. 1082, 43 L.Ed.2d 300 (1975).

In applying the analysis it had just articulated, the Supreme Court in *Alaska v. Native Village of Venetie, supra*, 522 U.S. 532, held that the land in question was not a "dependent Indian community." The Supreme Court reasoned that the federal set-aside requirement had not been satisfied because the land, although at one time constituting a reservation, had been transferred by the federal government to "private, state-chartered Native corporations, without any restraints on alienation or significant use restrictions . . ." *Id.*

As to the superintendence requirement, the Supreme Court found that federal protection of the Tribe's land was limited merely to "a statutory declaration that the land is exempt from adverse possession claims, real property taxes, and certain judgments as long as it has not been sold, leased, or developed." *Id.*, 533. Such minimal protections, the Supreme Court held, do not amount to the type of active control necessary to satisfy the superintendence requirement.

The subject land is not a dependent Indian community pursuant to § 1151(b) because it has not been set aside by the federal government for the use of the Indians as Indian land, and further it does not satisfy the superintendence requirement stated in *Native Village*. "The federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question." *Alaska v. Native Village of Venetie, supra*, 522 U.S. 531. Although the Tribe in this case had the option to transfer 59 Coachman Pike at any time to be held in trust by the United States during the years in question, the federal government, during the period in issue, did not exercise the type of active control referred to in *Native Village*. See also *State v. Dick*, 1999 NMCA 62, 127 N.M. 382, 387, 981 P.2d 796 (1999). (The court found

that the state did not have jurisdiction to prosecute the case against the defendant because the incident took place on land which was occupied by a dependent Indian community, defining dependent Indian community using the analysis set out in the *Venetie* case. The court in *Dick* considered that the land used for school purposes under the control of the Bureau of Indian Affairs met the requirements of federal superintendence.)

The plaintiff resided at the 59 Coachman Pike property from November 1, 1993 through September 1, 1998, and thereafter at the 1004 Shewville Road property from October 1, 1998 through December 31, 1998. We have previously noted that 59 Coachman Pike was conveyed to the United States in trust for the Tribe on August 25, 1998. From our resolution of the issue of whether 59 Coachman Pike was located in "Indian country," we conclude that 59 Coachman Pike was not located in "Indian country" during the period of November 1, 1993 though August 25, 1998, and therefore, the income earned by the plaintiff during that period of time was not exempt from state income taxes levied against her. The plaintiff acknowledges that 1004 Shewville Road was located outside of the "settlement area" and that it was purchased by the Tribe with private funds, not the funds designated as "settlement funds." (See PP10, 11 and 12 of Stipulation of Facts dated June 20, 2003.) Since the Shewville Road property was outside the "settlement area" and not conveyed to the United States in trust for the Tribe, it does not meet the test we have previously discussed, and therefore, it cannot be considered "Indian country" for the purpose of providing an exemption to the plaintiff from the payment of state income taxes during her period of residency at this property.

Accordingly, we find that the plaintiff's residency at 59 Coachman Pike from the period of the taxable years of 1996, 1997 and that portion of 1998 prior to the August 25, 1998

conveyance to the federal government did not provide an exemption to her from the payment of state income taxes. We also find that the plaintiff's residency in 1004 Shewville Road during the tax year of 1998 did not provide an exemption to her from the payment of the state income tax during the period October 1, 1998 though December 31, 1998.

Judgment may enter in favor of the Commissioner without costs to either party.

Arnold W. Aronson

Judge Trial Referee

SUPREME COURT
STATE OF CONNECTICUT

NO. SC 17140

JO-ANN DARK EYES

V.

COMMISSIONER, DEPARTMENT OF REVENUE SERVICES : FEBRUARY 14, 2006

ORDER

THE MOTION OF THE PLAINTIFF, FILED JANUARY 13, 2006, FOR RECONSIDERATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED**

BY THE COURT,

/s/Michele T. Angers
CHIEF CLERK

NOTICE SENT: FEBRUARY 15, 2006
KEVIN T. KANE, STATE'S ATTORNEY
SARAH E. STEERE, ASSISTANT STATE'S ATTORNEY
O'BRIEN, SHAFNER, STUART, KELLY & MORRIS
RICHARD BLUMENTHAL, ATTORNEY GENERAL
SUSAN QUINN COBB, ASSIST. ATTORNEY GENERAL
DAVID W. WINTERS
MARK T. KELLY
BROWN JACOBSON, P.C.
DONALD LAVERDURE, PRO HAC VICE
HON. ARNOLD ARONSON
CLERK, NEW BRITAIN, J.D. (CV02-0512959S)
REPORTER OF JUDICIAL DECISIONS 307/050314

§ 1751. Congressional findings and declaration of policy

The Congress finds that--

(a) there is pending before the United States District Court for the District of Connecticut a civil action entitled "Western Pequot Tribe of Indians against Holdridge Enterprises Incorporated, et al., Civil Action Numbered H76-193 (D. Conn.)," which involves Indian claims to certain public and private lands within the town of Ledyard, Connecticut;

(b) the pendency of this lawsuit has placed a cloud on the titles to much of the land in the town of Ledyard, including lands not involved in the lawsuit, which has resulted in severe economic hardships for the residents of the town;

(c) the Congress shares with the State of Connecticut and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claims;

(d) the parties to the lawsuit and others interested in the settlement of Indian land claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut;

(e) the Western Pequot Tribe, as represented as of the time of the passage of this Act [Oct. 18, 1983] by the Mashantucket Pequot Tribal Council, is the sole successor in interest to the aboriginal entity generally known as the Western Pequot Tribe which years ago claimed aboriginal title to certain lands in the State of Connecticut; and

(f) the State of Connecticut is contributing twenty acres of land owned by the State of Connecticut to fulfill this Act [25 USCS §§ 1751 et seq.]. The State of Connecticut will construct and repair three sections of paved or gravel roadways within the reservation of the Tribe. The State of Connecticut has provided special services to the members of

the Western Pequot Tribe residing within its borders. The United States has provided few, if any, special services to the Western Pequot Tribe and has denied that it had jurisdiction over or responsibility for said Tribe. In view of the provision of land by the State of Connecticut, the provision of paved roadways by the State of Connecticut, and the provision of special services by the State of Connecticut without being required to do so by Federal law, it is the intent of Congress that the State of Connecticut not be required to otherwise contribute directly to this claims settlement.

§ 1752. Definitions

For the purposes of this Act [25 USCS §§ 1751 et seq.]--

(1) The term "Tribe" means the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) as identified by chapter 832 of the Connecticut General Statutes and all its predecessors and successors in interest. The Mashantucket Pequot Tribe is represented, as of the date of the enactment of this Act [enacted Oct. 18, 1983], by the Mashantucket Pequot Tribal Council.

(2) The term "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(3) The term "private settlement lands" means--

(A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the secretary of the State of Connecticut in accordance with the agreement referred to in section 2(d) of this Act [25 USCS § 1751(d)], and

(B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on the date of the enactment of this Act [enacted Oct. 18, 1983]. Within thirty days of the enactment of this Act

[enacted Oct. 18, 1983], the secretary of the State of Connecticut shall transmit to the Secretary a certified copy of said map.

(4) The term "settlement lands" means--

(A) the lands described in sections 2(a) and 3 of the Act To Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982, and

(B) the private settlement lands.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "transfer" means any transaction involving, or any transaction the purpose of which was to effect, a change in title to or control of any land or natural resources, and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, whether pursuant to a treaty, compact, or statute of a State or otherwise.

(7) The term "reservation" means the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe.

§ 1753. Extinguishment of aboriginal titles and Indian claims

(a) Approval and ratification of prior transfers. Any transfer before the date of enactment of this Act [enacted Oct. 18, 1983] from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before the date of enactment of this Act [enacted Oct. 18, 1983] from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws

of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138) [unclassified], and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) Extinguishment of title. By virtue of the approval and ratification of a transfer of land or natural resources effected by subsection (a), any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian, Indian nation, or tribe or band of Indians, to any land or natural resources the transfer of which was approved and ratified by subsection (a) shall be regarded as extinguished as of the date of such transfer.

(c) Extinguishment of claims. By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, any claim (including any claim for damages for trespass or for use and occupancy) by, or on behalf of, the Tribe or any member of the Tribe or by any other Indian, Indian nation, or tribe or band of Indians, against the United States, any State or subdivision thereof or any other person which is based on--

(1) any interest in or right involving any land or natural resources the transfer of which was approved and ratified by subsection (a), or

(2) any aboriginal title to land or natural resources the extinguishment of which was effected by subsection (b),

shall be regarded as extinguished as of the date of any such transfer.

(d) Savings provision. Nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for Federal common law fraud

claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(e) Effective date; notice.

(1) This section shall take effect upon the appropriation of $ 900,000 as authorized under section 5(e) of this Act [25 USCS § 1754(e)].

(2) The Secretary shall publish notice of such appropriation in the Federal Register when the funds are deposited in the fund established under section 5(a) of this Act [25 USCS § 1754(a)].

§ 1754. Mashantucket Pequot Settlement Fund

(a) Establishment and administration. There is hereby established in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund (hereinafter referred to in this section as the "Fund"). The Fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this Act [25 USCS §§ 1751 et seq.].

(b) Expenditure of Fund; private settlement lands; economic development plan; acquisition of land and natural resources.

(1) The Secretary is authorized and directed to expend, at the request of the Tribe, the Fund together with any and all income accruing to such Fund in accordance with this subsection.

(2) Not less than $ 600,000 of the Fund shall be available until January 1, 1985, for the acquisition by the Secretary of private settlement lands. Subsequent to January 1, 1985, the Secretary shall determine whether and to what extent an amount less than $ 600,000 has been expended to acquire private settlement lands and shall make that amount available to the Tribe to be used in accordance with the economic development plan approved pursuant to paragraph (3).

(3) (A) The Secretary shall disburse all or part of the Fund together with any and all income accruing to such Fund (excepting the amount reserved in paragraph (2)) according to a plan to promote the economic development of the Tribe.

(B) The Tribe shall submit an economic development plan to the Secretary and the Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing and with particularity, the reasons for his disapproval.

(C) The Secretary may not agree to terms which provide for the investment of the Fund in a manner inconsistent with the first section of the Act of June 24, 1938 (52 Stat. 1037) [25 USCS § 162a], unless the Tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment.

(D) The Tribe may, with the approval of the Secretary, alter the economic development plan subject to the conditions set forth in subparagraph (B).

(4) Under no circumstances shall any part of the Fund be distributed to any member of the Tribe unless pursuant to the economic development plan approved by the Secretary under paragraph (3).

(5) As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility to the Tribe or its members with respect to the sums paid, any subsequent expenditures of these sums, or any property other than private settlement lands or services purchased with these sums.

(6) Until the Tribe has submitted and the Secretary has approved the terms of the use of the Fund, the Secretary shall fix the terms for the administration of the portion of the Fund as to which there is no agreement.

(7) Lands or natural resources acquired under this subsection which are located within the settlement lands

shall be held in trust by the United States for the benefit of the Tribe.

(8) Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land and natural resources. Such land and natural resources shall not be subject to any restriction against alienation under the laws of the United States.

(9) Notwithstanding the provisions of the first section of the Act of August 1, 1888 (25 Stat. 357, chapter 728) [40 USCS § 3113], as amended, and the first section of the Act of February 26, 1931 (46 Stat. 1421, chapter 307) [40 USCS § 3114], the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner.

(c) Transfer of private settlement land as involuntary conversion. For the purpose of subtitle A of the Internal Revenue Code of 1954, any transfer of private settlement lands to which subsection (b) applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of such Code.

(d) Documentation of relinquishment of tribal claims. The Secretary may not expend on behalf of the Tribe any sums deposited in the Fund established pursuant to subsection (a) of this section unless and until he finds that authorized officials of the Tribe have executed appropriate documents

relinquishing all claims to the extent provided by sections 4 and 10 of this Act [25 USCS §§ 1753 and 1759], including stipulations to the final judicial dismissal with prejudice of its claims.

(e) Authorization of appropriations. There is authorized to be appropriated $ 900,000 to be deposited in the Fund.

§ 1755. State jurisdiction over reservation

Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act.

§ 1756. Practice and procedure

(a) Constitutionality. Notwithstanding any other provision of law, the constitutionality of this Act [25 USCS §§ 1751 et seq.] may not be drawn into question in any action unless such question has been raised in--

(1) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on the date of the enactment of this Act [enacted Oct. 18, 1983], or

(2) an answer contained in a reply to a complaint before the end of such period.

(b) Jurisdiction. Notwithstanding any other provision of law, exclusive jurisdiction of any action in which the constitutionality of this Act [25 USCS §§ 1751 et seq.] is drawn into question is vested in the United States District Court for the District of Connecticut.

(c) Removal of actions. Any action to which subsection (a) applies and which is brought in the court of any State may be removed by the defendant to the United States District Court

for the District of Connecticut.

(d) Jurisdictional acts; implied consent to sue the United States. Except as provided in this Act [25 USCS §§ 1751 et seq.], no provision of this Act [25 USCS §§ 1751 et seq.] shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this Act [25 USCS §§ 1751 et seq.].

§ 1757. Restriction against alienation

(a) Subject to subsection (b), lands within the reservation which are held in trust by the Secretary for the benefit of the Tribe or which are subject to a Federal restraint against alienation at any time after the date of the enactment of this Act [enacted Oct. 18, 1983] shall be subject to the laws of the United States relating to Indian lands, including section 2116 of the Revised Statutes (25 U.S.C. 177).

(b) Notwithstanding subsection (a), the Tribe may lease lands for any term of years to the Mashantucket Pequot Housing Authority, or any successor in interest to such Authority.

§ 1758. Extension of Federal recognition and privileges

(a) Applicability of United States laws and regulations. Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this Act [25 USCS §§ 1751 et seq.], all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this Act [25 USCS §§ 1751 et seq.] shall be applicable to the Tribe.

(b) Filing of organic governing document and amendments. The Tribe shall file with the Secretary a copy of its organic governing document and any amendments thereto. Such instrument must be consistent with the terms of this Act [25 USCS §§ 1751 et seq.] and the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved June 9, 1982.

(c) Eligibility for services and benefits. Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of the date of enactment of this Act [enacted Oct. 18, 1983].

§ 1759. General discharge and release of State of Connecticut

Except as expressly provided herein, this Act [25 USCS §§ 1751 et seq.] shall constitute a general discharge and release of all obligations of the State of Connecticut and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of the Tribe or the United States as trustee therefor.

§ 1760. Separability of provisions

In the event that any provision of section 4 of this [25 USCS § 1753] Act is held invalid, it is the intent of Congress that the entire Act [25 USCS §§ 1751 et seq.] be invalidated. In the event that any other section or provision of this Act [25 USCS §§ 1751 et seq.] is held invalid, it is the intent of Congress that the remaining sections of this Act [25 USCS §§ 1751 et seq.] shall continue in full force and effect.

Substitute Senate Bill No. 507

SPECIAL ACT NO. 82-31

AN ACT TO IMPLEMENT THE SETTLEMENT OF THE MASHANTUCKET PEQUOT INDIAN LAND CLAIMS.

Be in enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. The following terms as used in this act shall have the following meanings: "Indian" means all persons recognized by the members of that tribe; and "reservation" means the Mashantucket Pequot reservation in the town of Ledyard, owned by the Mashantucket Pequot tribe or held in trust by the United States for said tribe, including those lands conveyed to the tribe by Edwin A. Card by deed in May, 1896, and those lands conveyed to or acquired by said tribe as part of the settlement of its land claims in the town of Ledyard.

Sec. 2. (a) The State of Connecticut confirms to the Mashantucket Pequot tribe in fee simple the lands comprising the reservation of said tribe, and the state releases and relinquishes to the Mashantucket Pequot tribe any claim of right, title or interest which the state may have in said reservation lands.

(b) The tribe, its reservation and the residents thereof shall be entitled to receive the same services and protection from the state as are provided to the other tribes, their reservations and the residents thereof pursuant to chapter 824 of the general statutes; provided, that subsection (b) of section 47-59b, sections 47-60 and 47-64, and subsection (d) of section 47-66 of the general statutes shall not apply to the Mashantucket Pequot tribe; and provided further that the commissioner of environmental protection shall take no action pursuant to section 47-65 with respect to the reservation of the Mashantucket Pequot tribe without the consent of the governing body of said tribe.

(c) None of the lands in the reservation of the Mashantucket Pequot tribe shall be subject to taxation by the state or any subdivision thereof.

Sec. 3. Notwithstanding the provisions of general statutes to the contrary, the governor is authorized to convey on behalf of the State of Connecticut to the Mashantucket Pequot Tribe, the following lands:

(1) A certain piece or parcel of land, containing two acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Northerly: By land now or formerly of Mary Gonch; Easterly: By land nor or formerly of Mary Gonch; Southerly: By land now or formerly of Mary Gonch; Westerly: By land now or formerly of Mary Gonch.

Being part of the land purchased by Mary Gonch from the Federal Land Bank, February 17, 1940, as recorded in the Land Records of the Town of Ledyard, Volume 16, Page 380, which premises are shown on a map entitled, "CONNECTICUT STATE PARK AND FOREST COMMISSION – PEQUOT BURIAL GROUND; Scale 1"=100' and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which the map the premises herein conveyed are shown as Parcel #1.

(2) A certain piece or parcel of land, containing 17.5 acres, more or less, situated in the Town of Ledyard, County of New London, State of Connecticut, bounded and described as follows:

Northerly: By Fanning Road and land now or formerly of Mary Gonch; Easterly: By land now or formerly of Mary Gonch; Southerly: By land nor or formerly of E.L. Scholfield; Westerly: By Fanning Road and land now or formerly of Mary Gonch.

And being part of the land purchased by said Mary Gonch from the Federal Land Bank, February 17, 1940, as recorded in the Land Records of said Town of Ledyard, Volume 16, Page 380, which premises are shown on a map

entitled, "CONNECTICUT STATE PARK AND FOREST COMMISSION – PEQUOT BURIAL GROUND; Scale 1"-100' and dated August 1967", on file or to be filed in the land records of said Town of Ledyard, on which map the premises herein conveyed are shown as Parcel #2.

Sec. 4. Any transfer of land or other natural resources located within the town of Ledyard from, by or on behalf of any Indian nation, or tribe or bank of Indians which occurred prior to the effective date of this act, shall be deemed to have been made in accordance with chapter 824 of the general statutes.

Sec. 5. This act shall take effect upon the enactment of legislation by the United States providing for extinguishment of aboriginal and all other Indian tribal land claims by or on behalf of the Mashantucket Pequot tribe and any other such claims in the town of Ledyard which are maintained under laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf or any Indian, Indian nation or tribe of Indians.

Conn. Gen. Stat. § 47-63 (2006)

§ 47-63. Definitions.

The following terms as used in this chapter, shall have the following meanings: "Indian" means a person who is a member of any of the following tribes, Paucatuck Eastern Pequot, Mashantucket Pequot, Schaghticoke, Golden Hill Paugussett and Mohegan; "reservation" means the Paucatuck Eastern Pequot reservation in the town of North Stonington, assigned to the use of the Paucatuck Eastern Pequot tribe; the Golden Hill Paugussett reservations in the towns of Trumbull and Colchester, assigned to the Golden Hill Paugussett tribe; the Schaghticoke reservation in the town of Kent, assigned to the Schaghticoke tribe, and the Mashantucket Pequot reservation in the town of Ledyard, assigned to the Mashantucket Pequot tribe; "tribal funds" means the money held by the state for the use and benefit of a tribe as distinguished from legislative appropriations.

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title [18 USCS §§ 1154 and 1156], the term "Indian country", as used in this chapter [18 USCS §§ 1151 et seq.], means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $ 2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United

States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

§ 1729. Deferral of capital gains

For the purpose of subtitle A of the Internal Revenue Code of 1954 [26 USCS §§ 1 et seq.], any transfer by private owners of land purchased or otherwise acquired by the Secretary with moneys from the land acquisition fund whether in the name of the United States or of the respective tribe, nation or band shall be deemed to be an involuntary conversion within the meaning of section 1033 of the Internal Revenue Code of 1954, as amended [26 USCS § 1033].

Supreme Court, U.S.
FILED
JUL 17 2006
OFFICE OF THE CLERK

No. 05-1464

In The
Supreme Court Of The United States

JO-ANN DARK-EYES
Petitioner,

v.

COMMISSIONER OF REVENUE SERVICES
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the Connecticut Supreme Court correctly determined that the "private settlement lands" identified by the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. §§ 1751-1760, were not "set aside" and therefore do not qualify as a "dependent Indian community" under 25 U.S.C. § 1151(b)?

TABLE OF CONTENTS

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW i

TABLE OF AUTHORITIES iv

COUNTER-STATEMENT OF THE CASE 1

Background 2

REASONS FOR DENYING THE WRIT 8

I. THE PETITION PRESENTS ONLY NARROW ISSUES OF LOCAL SIGNIFICANCE THAT DO NOT WARRANT REVIEW BY THIS COURT.... 8

II. THE CONNECTICUT SUPREME COURT'S UNANIMOUS DECISION PROPERLY STATED THE RULE OF LAW, APPLIED IT CORRECTLY AND DOES NOT CONFLICT WITH THIS COURT'S PRECEDENT OR THAT OF ANY OTHER COURT 10

A. The Connecticut Supreme Court Applied the Indian Canon to Find in the Petitioner's Favor on the Applicable Definition of "Indian Country" 11

B. The Connecticut Supreme Court Correctly Declined to Apply the Indian Canon to Re-write the Act and Allow the Tribe to Unilaterally Create Indian Country 14

III. THE DECISION BELOW IS CORRECT REGARDLESS OF HOW THE QUESTION PRESENTED IS DECIDED BECAUSE ALTERNATE GROUNDS DICTATE AFFIRMANCE 19

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Alaska v. Native Village of Venetie Tribal Government, 522 U.S. 520 (1998) ..... passim

Cass County v. Leech Lake Chippewa Indians, 524 U.S. 109 (1998) 21

Chickasaw Nation v. United States, 534 U.S. 84 (2001) ..... passim

City of Sherrill v. Oneida Indian Nation, 544 U.S. 197 (2005) 18

Conn. ex rel. Blumenthal v. United States Dept. of the Interior, 228 F.3d 82 (2d Cir. 2000), *cert. denied*, 532 U.S. 1007 (2001) 11

Jo-Ann Dark-Eyes v. Commissioner of Revenue Services, 276 Conn. 559 (2006) ..... passim

Dep't of Hous. v. Rucker, 535 U.S. 125 (2002) 18

Jones v. Meehan, 175 U.S. 1 (1899). 11

Montana v. Blackfeet Tribe of Indians, 471 U.S. 759 (1985) 11

Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co., 89 F.3d 908 (1st Cir. 1996). 7, 18

Oklahoma City v. Tuttle, 471 U.S. 808 (1985). 8

Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977) 11

State of Conn. v. DOI, 26 F. Supp. 2d 397
(D. Conn. 1998) 20

Constitutional Provisions

U.S. Const. Art. I, § 1 18

Statutes

18 U.S.C. § 1151 ..... passim

25 U.S.C. §§ 1751-1760 ..... i, 2

25 U.S.C. § 1752 ..... 8, 16

25 U.S.C. § 1753 ..... 5, 17, 21

25 U.S.C. § 1755 ..... 4, 12

25 U.S.C. § 1757 20

COUNTER-STATEMENT OF THE CASE

This case presents the question whether the income of a single member of a federal Indian tribe was exempt from the State of Connecticut's income tax from 1993 through 1998. In resolving this issue, the Connecticut Supreme Court properly applied well established precedent from this Court and federal statutes in concluding that the tribal member did not reside in Indian country, and therefore was not entitled to an exemption for the years in question. This Court's review of the Connecticut Supreme Court's decision would have no precedential impact beyond Connecticut and little impact even within this State due to the unique and highly specific factual circumstances this case involves.

The sole reason the petitioner provides for granting this petition is that the Connecticut Supreme Court allegedly failed to apply the Indian canon of construction, which provides that doubtful expressions of legislative intent should be resolved in favor of Indians. Contrary to the petitioner's claim, the Connecticut Supreme Court expressly recognized and applied the Indian canon. Indeed, the court applied the canon to rule in the petitioner's favor—and overrule the trial court—on an important predicate issue. Pet. 12a-13a (discussing Indian canon); Pet. 23a (expressly applying the Indian canon in rejecting argument advanced by the respondent). There is patently no merit to the petitioner's claim that the Connecticut Supreme Court failed to apply the Indian canon.

It is evident that the petitioner's real claim is that this Court should grant review because the Connecticut Supreme Court erred in applying a properly stated rule of law. Petitions for certiorari are rarely granted on such claims and there is nothing in this petition or the Connecticut Supreme Court's decision to suggest this case

should be an exception to that rule. The Connecticut Supreme Court did not err. The court conducted a detailed analysis of the Connecticut Indian Land Claims Settlement Act's (the "Connecticut Settlement Act" or the "Act") text and concluded that it clearly and unambiguously did not set aside the property at issue under this Court's precedent. This Court has consistently made clear—as recently as its decision in *Chickasaw Nation v. United States*, 534 U.S. 84 (2001)—that the Indian canon cannot override the clear text of a statute.

The Connecticut Supreme Court properly stated the law and correctly applied it to the unique facts presented to resolve a narrow issue. There is no reason, compelling or otherwise, to grant this petition.

Background

The parties stipulated to the following relevant facts below:

In 1983, the United States Congress enacted the Connecticut Indian Land Claims Settlement Act for the purpose of implementing a settlement agreement in a civil action initiated by the Mashantucket Pequot Indian Tribe (the "Tribe") to recover "Indian lands" from individual private property owners in Ledyard, Connecticut. 25 U.S.C. § 1751 *et. seq.*; Pet. 54a-64a.

The Act extended federal recognition to the Tribe. In addition, the Act established an initial reservation for the Tribe and a Settlement Fund pursuant to which the United States could purchase land from willing sellers at fair market value within a statutorily designated settlement area (the "Settlement Lands") for the benefit of the tribe. Certain lands purchased with Settlement Funds were deeded directly to the United States in trust for the Tribe. Certain other lands purchased by the Tribe within the

Settlement Lands with funds other than Settlement Funds have since been transferred to the United States to be held in trust for the Tribe for its reservation. Since 1983, when the Settlement Act was enacted, the Tribe has purchased some, but not all, of the land within the Settlement Lands and the United States has accepted some, but not all, of the Settlement Lands in trust for the benefit of the Tribe.

The petitioner is a Connecticut resident and an enrolled member of the Tribe. From November 1, 1993 through September 30, 1998, she resided at 59 Coachman Pike, in Ledyard, Connecticut (the "Coachman Pike Property" or the "Property"), which was located within the Settlement Lands and owned by the Tribe in fee until August 25, 1998. At that time, the Property was conveyed by the Tribe to the United States to be held in trust for the Tribe as part of its reservation. Prior to August 25, 1998, when the Tribe owned the Property in fee, the Tribe paid property taxes on it to the Town of Ledyard. The Tribe did not claim that the Property was exempt from taxation as "Indian country."

For the taxable years 1996, 1997 and 1998, the petitioner claimed that she was exempt from the Connecticut income tax on the grounds that she was an enrolled member of the Tribe and resided in "Indian country". The State of Connecticut Department of Revenue Services (the "Department") disagreed, concluding that the Coachman Pike Property where the petitioner resided did not become "Indian country" until it was transferred to the United States to be held in trust for the benefit of the Tribe as part of its reservation on August 25, 1998. The petitioner appealed the Commissioner of Revenue Service's ("Commissioner") determination to the Connecticut Superior Court, which affirmed the Commissioner's decision.

The petitioner then appealed to the Connecticut Supreme Court, which affirmed the trial court's decision and ruled in favor of the Commissioner on the merits. In that appeal, the petitioner pressed two primary claims. Pet. 8a. The first was that the trial court erred in applying a more restrictive definition of "Indian country" under the Settlement Act than that provided for in 18 U.S.C. § 1151. *Id.* The second was that the trial court erred by concluding, in the alternative, that the Property was not a dependent Indian community. *Id.*

Although the Connecticut Supreme Court ultimately ruled in the Commissioner's favor on the merits, it ruled in the petitioner's favor on her first argument and held—contrary to the decisions by the trial court and the Department—that the Settlement Act incorporated the broader definition of "Indian country" under 18 U.S.C. § 1151, even though the Settlement Act's only reference to "Indian country" provides that "'the reservation of the Tribe is declared to be Indian country.'" Pet. 19a-20a (quoting 25 U.S.C. § 1755). In so holding, the Court noted that its interpretation raised questions in light of the statutory text, but concluded that the Commissioner's construction "would contravene basic rules of construction . . . that are applicable to Indian sovereignty," specifically that "[s]tatutes are to be construed in favor of the Indians, with ambiguous provisions interpreted to their benefit." Pet. 20a, 23a (quotation marks omitted); *see also* Pet. 12a-14a (discussing the Indian canon in detail).

The Connecticut Supreme Court's conclusion that the Settlement Act incorporates 18 U.S.C. § 1151's definition of "Indian country" led the court to address whether the Property was a dependent Indian community and, therefore, Indian country. There is no dispute that the relevant rule of law on this issue comes from this Court's decision in *Alaska v. Native Village of Venetie Tribal*

Government, 522 U.S. 520 (1998) ("*Venetie*"). Pet. 3 (citing *Venetie* framework for analysis of the question presented). There is also no dispute that the Connecticut Supreme Court properly stated that rule of law, which requires that "(1) set aside and (2) superintendence" be shown to establish that land is a dependent Indian community. Pet. 25a (citing *Venetie*, 522 U.S. at 530); *see also* Pet. 3 (using identical language to set out applicable rule).

In applying *Venetie*'s rule of law to the specific and unique factual circumstances presented, the court conducted a detailed analysis to determine whether the Settlement Act "set aside" the Property as a dependent Indian community. It began that analysis with a lengthy discussion of the case law—from this Court and others—setting forth the parameters of the set aside inquiry. Pet. 27a-30a. The court then applied those principles to the text of the Settlement Act and concluded that the Act unambiguously did *not* create a set aside for three reasons. "First and foremost, the settlement act extinguished the tribe's aboriginal or tribal title to any of the private settlement lands as a condition of receiving the settlement fund." Pet. 30a-31a (footnotes omitted; citing 25 U.S.C. § 1753). "Second, the act provided a limited window of opportunity for the tribe to use the settlement fund to obtain private settlement lands." Pet. 32a. Lastly, the text of the Act shows that "the focus of the settlement act clearly is on the disbursement of the settlement fund, not the purchase of the land." Pet. 33a-34a. Thus, the Connecticut Supreme Court concluded, following a detailed analysis based on the proper rule of law, that the text of the Act established that the Property was not set aside as a dependent Indian community.

Having concluded that the text of the Act was clear and unambiguous, the court nonetheless went on to address

the Act's legislative history—on which the petitioner based much of her argument below and in this petition—and concluded that it supported the court's interpretation of the statutory text. Pet. 30a-33a (discussing in detail the "several aspects" of the statutory text that clearly indicated the Act did not create a set aside and then discussing legislative history only to the extent there was "any plausible ambiguity" in the text). Specifically, the Act's history showed "that the parties were well aware that some of the property owners within the private settlement lands would choose not to sell their property to the tribe within the time allotted, and the agreement was designed to accommodate the nontribal ownership." Pet. 35a. "In light of the unequivocal evidence as to holdout landowners within the private settlement lands," the court could not "read Congress' failure to provide any mechanism for the tribe to acquire such lands should they later become available as a mere oversight." *Id.*

The court then addressed the statements in the legislative history "indicating that the tribe may have viewed the settlement as an agreement for land and not for money, and that it expected almost all of the settlement lands to be purchased with the allotted funds," which provided much of the support for the petitioner's argument below and the theme for this petition. Pet. 3, 13. The court correctly concluded—consistent with this Court's decisions—that "[t]he tribe's hopes and expectations as to the land . . . are enforceable only to the extent that they are embodied in the settlement act." Pet. 36a. Because the text of the Act belied those expectations, the petitioner's claim failed.

The court concluded by noting that—in light of its detailed analysis of the Act—"[p]ut simply, it is too far a stretch to conclude that establishing a finite settlement fund for economic development and land purchase evidences a

federal intent to give the tribe presumptive sovereignty over the Coachman property by making it Indian country." Pet. 36a. "'It seems implausible that a tribe could obtain a valid claim to Indian country—and thus presumptive sovereignty rights—over theretofore privately-held lands just by purchasing them.'" *Id.* (quoting *Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co.*, 89 F.3d 908, 922 (1st Cir. 1996)). That would allow state and local governments to have lands taken out of their jurisdiction without notice or an opportunity to negotiate an agreement to avoid that result. *Id.* That is not a reasonable view of the Act, which

> at best evidences an intent to assist in the economic development of the tribe and to allow it to acquire those lands within the designated area that the private landowners had agreed to sell to the tribe during settlement negotiations without necessarily incurring a commitment to exercise jurisdiction over all activities on that land, whenever acquired by the tribe, to the presumptive exclusion of state laws.

Pet. 37a. Thus, the court concluded that "there is no set aide" and did not need to address the second part of the *Venetie* inquiry, whether the Property was "under the superintendence of the United States before being taken into trust." *Id.*

REASONS FOR DENYING THE WRIT

I. THE PETITION PRESENTS ONLY NARROW ISSUES OF LOCAL SIGNIFICANCE THAT DO NOT WARRANT REVIEW BY THIS COURT

In seeking this Court's review of the Connecticut Supreme Court's decision that the income of a single member of a federal Indian tribe residing on a specific parcel of property was not exempt from the State of Connecticut's income tax from 1993 through 1998, this petition presents a question relating to the interpretation of a statute—the Connecticut Indian Land Claims Settlement Act—that, as the petitioner acknowledges, is specific to a single tribe and concerns land in a single State. Pet. 13. This petition simply does not raise an issue of national importance that requires a portion of this Court's "scarce judicial resources." *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985).

It is difficult to imagine a case involving a federal statute that would have less national impact than this one. The Connecticut Settlement Act involves only the Mashantucket Pequot Tribe and impacts a small amount of land in Connecticut. *See* 25 U.S.C. § 1752. The narrow scope and applicability of the statute counsels strongly against granting the petition, as a decision by this Court would have—at most—a minor impact. Indeed, it will likely have no impact at all because, as discussed in detail below, the Connecticut Supreme Court's decision is correct and would likely be affirmed.

The petitioner's efforts to ascribe national significance to this purely local issue are insufficient on their face. The petitioner claims that this Court's intervention is necessary because the Connecticut Supreme Court failed to apply the Indian canon to the Connecticut

Settlement Act and, in a related vein, because this Court has not provided sufficient guidance as to what constitutes a "set aside" under 18 U.S.C. § 1151. Pet. 3. Neither of those reasons survives scrutiny.

The claim that the Connecticut Supreme Court failed to apply the Indian canon to the Connecticut Settlement Act is patently incorrect. As will be discussed in detail below, the court properly stated the rule of law, expressly applied the Indian canon in the petitioner's favor to reject an argument advanced by the Commissioner and properly applied it otherwise.

The assertion that this Court has not provided sufficient guidance as to the circumstances that create a "set aside" likewise lacks merit. In support of the supposed lack of guidance, the petition places heavy emphasis on the Connecticut Supreme Court's dicta that "'the precise circumstances necessary to satisfy a set aside have not been clearly delineated by the courts.'" Pet. 12 (quoting *Dark-Eyes*, 276 Conn. at 588; emphasis in petition). The court's statement is not surprising—it would be impossible to "clearly delineate" the "precise circumstances" governing any inquiry as fact-specific as whether specific land has been set aside.

It does not follow that the Connecticut Supreme Court lacked sufficient guidance to determine whether the Coachman Property was set aside and that this Court's intervention is therefore necessary. Indeed, the same sentence the petitioner emphasizes goes on to state that "prior case law examining the issue provides some illumination" and the Connecticut Supreme Court proceeded to discuss that case law—including multiple decisions from this Court—in detail. Pet. 28a. Tellingly, the petition does not point to a single conflict between the Connecticut Supreme Court's decision and any of the

decisions that court cited in setting out the contours of the set aside determination. Pet. 27a-30a. That indicates that—contrary to the petitioner's assertions—this Court's previous decisions and the existing case law provide ample guidance.

Given the limited scope and impact of the statute at issue, the unique facts involved and the lack of any conflict between the Connecticut Supreme Court's decision and the existing case law, there is no need for a decision by this Court and the petition should be denied.

II. THE CONNECTICUT SUPREME COURT'S UNANIMOUS DECISION PROPERLY STATED THE RULE OF LAW, APPLIED IT CORRECTLY AND DOES NOT CONFLICT WITH THIS COURT'S PRECEDENT OR THAT OF ANY OTHER COURT

The focal point of the petition is the Connecticut Supreme Court's alleged failure to apply the Indian canon of construction in interpreting the Connecticut Settlement Act. In reality, the court *did* explicitly recognize *and apply* the canon. The gravamen of the petitioner's claim—that the court erred because it did not apply the canon to contradict the text of the Act—has no merit. The Connecticut Supreme Court's unanimous decision correctly declined to apply the Indian canon to supersede the unambiguous text of a federal statute, consistent with this Court's precedent and decisions of other courts.

A. The Connecticut Supreme Court Applied the Indian Canon to Find in the Petitioner's Favor on the Applicable Definition of "Indian Country"

The petition claims that the Connecticut Supreme Court failed to apply the Indian canon of interpretation. Pet. 3, 13-14. That simply is not true. In setting forth the applicable principles of statutory construction, the decision expressly referenced the Indian canon as set forth by this Court, stating, *inter alia*, that: "[w]hen interpreting statutes implicating Indian affairs, . . . [s]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." Pet. 12a. The court went on to state that "[i]n determining [congressional] intent, we are cautioned to follow the general rule that doubtful expressions are to be resolved in favor of [those] who are the wards of the nation, dependent upon its protection and good faith." *Id.* (quoting *Conn. ex rel. Blumenthal v. United States Dept. of the Interior*, 228 F.3d 82, 92 (2d Cir. 2000), *cert. denied*, 532 U.S. 1007 (2001)); *see also Conn. ex rel. Blumenthal*, 228 F.3d at 92 (applying Indian canon of construction and relying on *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985), *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977) and *Jones v. Meehan*, 175 U.S. 1 (1899)).

The decision proceeded to note that although the Connecticut Supreme Court "was mindful that the United States Supreme Court has stated recently that the Indian construction canon is not a mandatory rule," the canon remains viable even where, as here, the Tribe at issue has "tremendous wealth." Pet. 12a n.12 (citing *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001)). Thus, there can be no doubt that the Connecticut Supreme Court properly stated the applicable rule of law. That strongly militates against granting this petition. As this Court's rules expressly state, "[a] petition for a writ of certiorari is

rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10.

This case does not present the rare circumstances that could justify granting a petition despite the court below having applied the correct rule of law. The Connecticut Supreme Court went beyond just properly recognizing and stating the Indian canon. It went so far as to apply that canon in the petitioner's favor to reject a separate argument made by the Commissioner that both the trial court and the agency had found persuasive. Pet. 6a-7a, 23a.

The first part of the analysis in the decision below addressed whether the Act defined "Indian country" to include only land that is part of the Tribe's reservation or incorporated the broader, generally applicable, definition of "Indian country" under 25 U.S.C. § 1151. Pet. 14a-23a.

The Commissioner argued that the Act defines "Indian country" to include only reservation land. That reading finds substantial support in the "only reference to Indian country in the settlement act," which provides that "'the reservation of the Tribe is declared to be Indian country.'" Pet. 17a-18a, 19a (quoting 25 U.S.C. § 1755). By necessary implication, that express statement in the text classifying only reservation land as "Indian country"—with no mention of the other well-established categories of "Indian country" under § 1151—indicates clear and unambiguous congressional intent that a more limited definition of "Indian country" apply to the Act.

Because the text of the statute is arguably unambiguous on the question, the Indian canon—on which the petitioner bases her petition—is not applicable. This Court made that clear in *Chickasaw Nation*, holding that the Indian canon is no more than a guide that "need not be conclusive" and that it cannot be used to create an "interpretation that . . . would conflict with the intent embodied in the statute Congress wrote." *Chickasaw*

Nation, 534 U.S. at 95. Thus, the Connecticut Supreme Court could, and should, have agreed with the Commissioner's argument below—as did both the trial court and the agency—and ruled against the petitioner without the Indian canon even coming into play.

The Connecticut Supreme Court, however, held that the broader definition of Indian country under § 1151 applied to the Act, despite acknowledging that its reading raised a question "as to why Congress would indicate that the tribe's reservation is Indian country if not intending to limit the meaning of Indian country because a reservation is only one of three ways of establishing Indian country under § 1151." Pet. 20a. In so doing, the court expressly relied in part on the Indian canon, noting that the interpretation advanced by the Commissioner "would contravene basic rules of construction previously noted that are applicable to Indian sovereignty" and reiterating that "[s]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." Pet. 23a (quotation marks omitted).

That conclusion weighs against this Court granting the petition in two significant respects. The first is that it raises questions about the viability of this case as a vehicle to reach the question presented. The Connecticut Supreme Court's decision to apply the Indian canon to contradict the unambiguous text of the Act on a preliminary issue is itself contrary to this Court's decision in *Chickasaw Nation*. That is a predicate issue to the question presented and a ruling in respondent's favor on that basis—which *Chickasaw Nation* requires—would be of limited applicability and would preclude this Court from reaching the merits of this petition. *See* Supreme Court R. 14.1 ("The statement of any question presented is deemed to comprise every subsidiary question fairly included therein.").

The second, and more fundamental, reason why the Connecticut Supreme Court's reliance on the Indian canon to reject the Commissioner's argument counsels against granting the petition is that it completely undercuts the premise on which the petition is based; namely, that the Connecticut Supreme Court failed to apply the Indian canon. Pet. 3, 13-14. The decision makes clear that the court did recognize and apply the canon—it simply declined to apply it to override the requirements this Court set forth in *Venetie* to establish whether land is part of a dependent Indian community and therefore Indian country for purposes of § 1151.[1]

B. The Connecticut Supreme Court Correctly Declined to Apply the Indian Canon to Re-write the Act and Allow the Tribe to Unilaterally Create Indian Country

Despite the Connecticut Supreme Court's proper statement of the Indian construction canon and application of that canon to rule in the petitioner's favor on an important predicate issue below, the petition claims that review by this Court is necessary because the Connecticut Supreme Court did not apply the Indian canon to allow the Tribe to unilaterally create Indian country by purchasing land with its own funds. That argument has no merit. The Connecticut Supreme Court correctly held that the text of the Act unambiguously does not create a set aside and this Court has made clear that the Indian canon cannot be used

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[1] The petitioner has limited the question presented to whether the lands at issue were set aside for purposes of the Indian country determination. She does not challenge the Connecticut Supreme Court's conclusion that the land did not qualify as a formal reservation, informal reservation or an allotment during the pertinent time period. Pet. 24a & n.22.

to reach a result contrary to unambiguous statutory text. *See Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). The Connecticut Supreme Court's decision was correct and review by this Court is not necessary.

The dispositive question addressed by the Connecticut Supreme Court was whether the Act set aside the Coachman Property "as a dependent Indian community under § 1151(b) before [the Property was] . . . taken into trust." Pet. 25a. Again, the Connecticut Supreme Court properly stated the applicable rule of law, which comes from this Court's decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998).[2] *Venetie* "established a two-pronged test requiring, (1) set aside and (2) superintendence" to be shown before property can qualify as a dependent Indian community. Pet. 25a (citing *Venetie*, 522 U.S. at 530). Both prongs must be satisfied for the property to be a dependent Indian community and, therefore, Indian country. Pet. 26a.[3]

"'The federal set-aside requirement ensures that the land in question is occupied by an "Indian community."'" *Id.* (quoting *Venetie*, 522 U.S. at 530). "[T]o qualify under the 'limited category' of land that constitutes a dependent Indian community, the land 'must have been set aside by the Federal Government for the use of the Indians as Indian

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[2] The petitioner apparently concedes that *Venetie* provides the applicable rule of law and that the Connecticut Supreme Court properly stated that rule. Pet. 3.

[3] Because the Connecticut Supreme Court held that the property was not set aside, it concluded that it "need not determine whether the Coachman property was under the superintendence of the United States before being taken into trust." Pet. 37a. As discussed in section III below, the lack of federal superintendence over the property provides additional support for the conclusion that the decision is correct and that the petition should be denied.

land. . . .'" Pet. 27a (quoting *Venetie*, 522 U.S. at 527). As this Court has held and the Connecticut Supreme Court recognized, the set-aside requirement serves two purposes:

> (1) it ensures that the land in question is occupied by an Indian community . . . and (2) it reflects the fact that because Congress has plenary authority over Indian affairs . . . some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country.

Pet. 28a (quotation marks omitted); *see also Venetie*, 522 U.S. at 531 n.6. Recognizing the property at issue as set aside under the circumstances presented here would be inconsistent with both of those purposes.

Venetie establishes that the set aside requirement is intended to "ensure[] that the land in question is occupied by an 'Indian community'" and that "some explicit action by Congress (or the Executive, acting under delegated authority) must be taken to create or to recognize Indian country." *Venetie*, 522 U.S. at 531 & n.6. The only Congressional action taken with regard to the Property here was to identify it in the text of the Act as "private settlement land[]"—"privately held land" within "the eight hundred acres, more or less, . . . identified by a red outline on a map filed with the Secretary of the State of Connecticut" in accordance with the settlement agreement. 25 U.S.C. § 1752(3)(A) (Pet. 55a). By definition, expressly recognizing the land as "privately held" is not an explicit action by Congress indicating the land is "occupied by an 'Indian community'" for purposes of *Venetie*. *Venetie*, 522 U.S. at 531 & n.6. That alone is fatal to the petitioner's claim that Congress set aside the property for the Tribe.

Moreover, as the Connecticut Supreme Court correctly held, several other aspects of the Act's text unambiguously indicate that once the settlement funds were

disbursed, the Act "did not ensure that the remaining private settlement lands such as the Coachman property, were occupied by, and hence set aside for, the tribe." Pet. 30a. "First and foremost, the settlement act extinguished the tribe's aboriginal or tribal title to any of the private settlement lands as a condition of receiving the settlement fund." Pet. 30a-31a (citing 25 U.S.C. § 1753). Second, in "marked contrast" to another settlement act, the Act "provided a limited window of opportunity for the tribe to use the settlement fund to obtain private settlement lands" and expressly provides that once that time has passed the United States has "'no further trust responsibility to the Tribe or its members with respect to . . . any property *other than private settlement property purchased with these sums*.'" Pet. 32a (quoting 25 U.S.C. § 1754(b)(5)) (emphasis in decision). Lastly, "the focus of the settlement act clearly is on the disbursement of the settlement fund, not the purchase of the land." Pet. 34a. Thus, the text of the Act unambiguously establishes that it was not intended to set aside the privately held settlement lands, such as the Coachmen Property.

The petitioner seeks to avoid the unambiguous text of the statute by arguing that the Connecticut Supreme Court was required to apply the Indian canon of construction to re-write the Act to allow the Tribe to unilaterally and immediately create Indian country simply by purchasing land within the "private settlement lands" without any further action by Congress or the Secretary. Pet. 14. That argument is contrary to this Court's decision in *Chickasaw Nation*, which held that the Indian canon—like all other canons—is no more than a tool "designed to help judges determine the Legislature's intent as embodied in particular statutory language" and cannot be relied on to "produce an interpretation that . . . would conflict with the intent embodied in the statute Congress wrote." *Chickasaw Nation*, 534 U.S. at 94. Put differently, canons generally "ha[ve] no application in the absence of statutory

ambiguity. Any other conclusion, while purporting to be an exercise in judicial restraint, would trench upon the legislative powers vested in Congress by Art. I, § 1, of the Constitution." *Dep't of Hous. v. Rucker*, 535 U.S. 125, 134-35 (2002) (quotation marks and citations omitted).

The Connecticut Supreme Court correctly held that the text of the Act unambiguously indicates that Congress did not intend the Act to allow the Tribe to "'obtain a valid claim to Indian country—and thus presumptive sovereignty rights—over theretofore privately-held lands just by purchasing them.'" Pet. 36a (quoting *Narragansett Indian Tribe of Rhode Island v. Narragansett Electric Co.*, 89 F.3d 908, 922 (1st Cir. 1996)). That would allow state and local governments to have lands taken out of their jurisdiction without notice or an opportunity to negotiate an agreement to avoid the resulting checkerboard of jurisdiction. *Id.* As this Court recently recognized, allowing a tribe to unilaterally create "[a] checkerboard of alternating state and tribal jurisdiction . . . would seriously burde[n] the administration of state and local governments and would adversely affect landowners neighboring the tribal patches." *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 219-20 (2005) (quotation marks omitted).

The Connecticut Supreme Court correctly held—based on a detailed analysis of the text of the Act—that it is "'implausible'" that Congress intended the Act to allow the Tribe to unilaterally impose such burdens on state and local governments and adjoining land owners. Pet. 36a (quoting *Narragansett Indian Tribe*, 89 F.3d at 922). The petitioner's efforts to have the Connecticut Supreme Court re-write the Act to reach that implausible result were rightly rejected and there is no need for this Court to review that decision.

III. THE DECISION BELOW IS CORRECT REGARDLESS OF HOW THE QUESTION PRESENTED IS DECIDED BECAUSE ALTERNATE GROUNDS DICTATE AFFIRMANCE

Because the Connecticut Supreme Court held that the Coachman Property was not set aside under *Venetie*, the court did not address whether the property was under federal superintendence before the United States took it into trust. Pet. 37a. As the trial court correctly held, it is clear that the Coachman Property was not under federal superintendence during the relevant time period. Pet. 50a. This fact provides an independent bar to the petitioner's claim that the property is a dependent Indian community and ensures that a decision by this Court would not change the result of this litigation.

Venetie holds that both "a federal set-aside *and* a federal superintendence requirement must be satisfied for a finding of a 'dependent Indian community.'" *Venetie*, 522 U.S. at 530 (emphasis in original). "[T]he federal superintendence requirement guarantees that the Indian community is sufficiently 'dependent' on the Federal Government that the Federal Government and the Indians involved, rather than the States, are to exercise primary jurisdiction over the land in question." *Id.* at 531. This inquiry focuses on the land at issue rather than who inhabits it. *Id.* at 534.

Here, the State had full jurisdiction to apply its laws to the petitioner's property prior to 1998, when the land was taken into trust. That is fatal to the petitioner's claim of federal superintendence. *Id.* at 531. The petitioner sought to avoid that clear bar below by arguing, without support, that federal acknowledgement, by definition, entails federal superintendence because the federal government supervises the political economic and social life of acknowledged tribes. Of course, this Court

explicitly rejected that argument in *Venetie*, holding "that it is *the land in question*, and not merely the Indian tribe inhabiting it, that must be under the superintendence of the Federal Government." *Id.* at 530 n.5 (emphasis in original).

The petitioner also sought to salvage her claim by arguing that the Act imposed a restraint on alienation of private settlement land that the Tribe acquired in fee with its own funds, even if those lands were not part of the reservation or taken into trust. That argument is contrary to the Act, which provides that lands are not subject to a restraint on alienation until they are taken into trust by the United States, with the exception of reservation land that—though technically held in fee by the Tribe—is expressly made subject to a restraint on alienation pursuant to the Non Intercourse Act. 25 U.S.C. § 1757(a) (Pet. 62a); *State of Conn. v. DOI*, 26 F. Supp. 2d 397, 405 n.18 (D. Conn. 1998), *rev'd on other grounds* 228 F.3d 82 (2d Cir. 2000) (concluding that § 1757(a)'s reference to "federal restraint against alienation" applies to the existing reservation of the tribe held in fee).

The petitioner apparently realized below that there was no support for her argument in the text or history of the Act. She cited with approval the district court's conclusion in *State of Connecticut* that the § 1757(a) reference to restraints on alienation was intended to create a trust relationship with regard to the existing reservation that was technically held in fee, but went on to argue—again without support—that the "Property which is subject of this appeal is no different than the status of the existing reservation . . . [and that] The Property should be deemed to be subject to a federal restraint against alienation pursuant to the Non Intercourse Act, just as the existing reservation is." Appellant's Reply Br., 12-13.

That argument lacks merit. The Act expressly extinguished the Tribe's aboriginal titles and Indian claims.

25 U.S.C. § 1753. Therefore, the Tribe no longer has any claim under the Non Intercourse Act in this State and that Act does not apply to the Property. Moreover, this Court has made clear "[t]hat the subsequent repurchase of reservation land by a tribe does not manifest any congressional intent to reassume federal protection of that land and to out state taxing authority—particularly where Congress expressly relinquished such protection many years before." *Cass County v. Leech Lake Chippewa Indians*, 524 U.S. 109, 114, 118 (1998). The State had jurisdiction over the land until it was taken into trust and the petitioner cannot establish federal superintendence. Therefore, a decision by this Court on the question presented will not impact this litigation and granting the petition will be a waste of the Court's valuable resources.

CONCLUSION

For all of the reasons set forth herein, the petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: July 14, 2006.